United States Court of Appeals

for the Second Circuit

APPENDIX

74-2340

ORIGINAL

United States Court of Appeals

For the Second Circuit.

UNITED STATES COURT OF APPEALS
FILED
FEB 14 1975
DANIEL FUSARO, CLERK
2nd CIRCUIT

ALLEN & COMPANY,
Plaintiff-Appellant,

against

OCCIDENTAL PETROLEUM CORPORATION,
Defendant-Appellee.

JOINT APPENDIX.

Volume I—Pages 1a to 544a.

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(5310)

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United States Court of Appeals

FOR THE SECOND CIRCUIT.

ALLEN & COMPANY,

Plaintiff-Appellant,

against

OCCIDENTAL PETROLEUM CORPORATION,

Defendant-Appellee.

Docket Entries.

Date		Proceedings
1967		
Oct.	16	Filed petition and record for removal from the Supreme Court, State of New York, County of New York
Oct.	17	Filed Notice to take Deposition.
Oct.	31	Filed deft's Answer
Nov.	4	Filed stip. & order adjourning deposition of Charles Allen to 11-17-67, etc.—Weinfeld, J.
Nov.	22	Filed Notice of Examination.
Dec.	1	Filed pltff's notice to take deposition of deft.
Dec.	12	Filed Order to Show Cause *re:* Quash Subpoena. Ret. 12/14/67.
Dec.	12	Filed stipulation and order adjourning deposition of Occidental Petroleum Corp. to 1/22/68, etc. Sugarman, Ch. J.
Dec.	20	Filed stip. adjourning motion to quash filed 12-12-67 to 1-4-68 (M)

Docket Entries

1968

Jan.	15	Filed stip. & order adjourning deposition of deft. to 2-7-68 & withdrawing the subpoena *duces tecum* issued by deft.—Metzner, J.
Jan.	26	Filed memo endorsed on motion filed 12-12-67. Motion withdrawn. So ordered.—Metzner, J.
Apr.	18	Filed stip. & order adjourning examination of deft. to 5-8-68, etc.—Tenney, J.
Apr.	22	Filed stip. & order adjourning examination of deft. by Armand Hammer, to 5-8-68.—Tenney, J.
Apr.	30	Filed notice of change of address of atty. for deft.
Sept.	4	Filed plaintiff's notice of taking deposition of deft.
Sept.	9	Filed defendant's notice of taking deposition of Howard M. Holtzman.
Sept.	11	Filed stip. & order adjourning taking of deposition of deft. by Richard Vaughan to 30 days from 9-10-68.—Herlands, J.
Oct.	4	Filed plaintiff's affidavit and notice of motion to answer questions, etc., ret. 10-10-68
Oct.	4	Filed plaintiff's memorandum in support of motion.
Oct.	9	Filed stip. & order that the taking of deposition of Richard Vaughan will commence 11-1-68 and that of Howard M. Holtzmann will commence on 11-12-68—Ryan, J.
Oct.	18	Filed affidavit and notice of motion by deft. for protective order.
Oct.	18	Filed memo endorsed on motion filed 10-18-68—After hearing, questions are directed to be answered as ruled upon, under protective order to be settled on notice. See reporter's minutes.—Ryan, J.

Docket Entries

Oct.	18	Filed defendant's affidavit and notice of motion for an order pursuant to Rule 37
Oct.	18	Filed memo endorsed on motion filed 10-18-68 —After hearing, questions propounded to the witness were ruled upon by the Court; see transcript of Reporter's Minutes appropriate protective order may be submitted on 5 days notice of settlement. Ryan, J.
Oct.	18	Filed defendant's affidavit and notice of motion for order pursuant to Rule 37
Oct.	18	Filed memo endorsed on motion filed 10-18-68— After hearing, the witness is directed to answer in accordance with rulings made by the Court, see reporter's minutes of hearing, settle on notice appropriate protective order.—Ryan, J.
Oct.	25	Filed defendant's affidavit and notice of motion pursuant to Rule 45.
Oct.	25	Filed memo endorsed on motion filed 10-25-68 —Motion withdrawn without prejudice. Ryan, J. mn
Oct.	25	Filed memo endorsed on motion filed 10-4-68— After hearing, answers were directed as reflected and shown in the Reporter's Minutes; settle appropriate protective order on notice as directed at hearing held.—Ryan, J.
Oct.	30	Filed defendant's show cause order to postpone deposition, ret. 10-31-68
Oct.	31	Filed memo endorsed on show cause order filed 10-30-68—Motion withdrawn—Wyatt, J. mn
Nov.	6	Filed stip. & order that the deposition of Richard H. Vaughn will be taken on 12-4-68 at office of plaintiffs atty. and that the deposition of Howard M. Holtzmann will be held at the office of defts. attys. on 12-18-68—MacMahon, J.

Docket Entries

Nov.	22	Filed Notice of Settlement ret. 11-22-68 10 A. M. and Order—the parties, their attys. Borak Reporting Service, the Bar Assoc. Reporting Service be enjoined from publishing or disclosing to any third party any of the documentary evidence as indicated, etc. Ryan, J. mn
Dec.	6	Filed Affidavit and Re-settled Order with Notice of re-settlement. ret. 11-29-68 10 A. M.
Dec.	6	Filed Memo End. on Order filed same date—motion to resettle order denied as unnecessary to protect pltffs. rights. In the event that further litigation on this claim should develop between these parties, pltff. may apply to the Court, upon a proper showing for an order permitting it to use this information in that litigation. so ordered. Ryan, J. mn
Dec.	6	Filed Defts. Memorandum in Opposition to pltff's application for resettlement of order
Dec.	27	Filed pltffs. Notice of Examination of James Blom
1969		
Apr.	3	Filed pltffs. Notice of Deposition
Apr.	7	Filed pltffs. Order to Show Cause *re:* Deposition ret. April 10, 1969 10 A. M. Room 506
Apr.	10	Filed memo end. on motion filed April 7, 1969—motion disposed of as indicated by Court at end of argument. Settle order accordingly.—Tyler, J. mn
Apr.	10	Filed (in court) Opposing (Affidavit) of Louis Nizer.
Apr.	10	Filed (in court) Affidavit (Reply or Supplemental).
Apr.	10	Filed (in court) Opposing Affidavit of Neil A. Pollio.

Docket Entries

Apr.	10	Filed (in court) Certification under Rule 9f.
Apr.	14	Filed Notice of Settlement and Order. Ordered that Plaintiff's motion is granted on the conditions set forth; Ordered that a commission shall issue directed to Hon. Ralph Cadeaux, U. S. Consul, American Embassy, London, England, etc. etc. Tyler, J. (mailed notice)
Apr.	15	Issued Commission to London, England.
Apr.	28	Filed Defts. Memorandum in support of its application for resettlement of order.
Apr.	28	Filed Notice of Settlement and Order—ordered that aforesaid order signed on April 14, 1969 is hereby rescinded, and it is further ordered that pltffs motion be hereby granted on the terms and conditions indicated, etc.—Tyler, J. mn
May	12	Filed Deposition of Fuad Kabazi taken at the American Embassy (England) 4-29-69 pursuant to pltffs. notice dated 4-1-69 and the Order of Judge Harold R. Tyler dated 4-24-69. mn (Impounded in Vault in rm. 602)
June	11	Filed pltffs. Notice of Deposition of Ferdinand Galic on 7-1-69
June	17	Filed pltffs. Notice of Deposition of Howard Holtzmann on 6-26-69 mn
June	17	Filed pltffs. Notice of Deposition of C. James Blom, 6-24-69 mn
June	19	Filed pltffs. Memorandum in support of motion under Rule 34
June	19	Filed pltffs. Notice of Motion and Affdvt. of Samuel N. Greenspoon, to produce and inspect ret. 6-26-69 Room 506 10 A. M. for an order pursuant to Rule 34, etc.
June	17	Filed Order to Show Cause and Affdvt. of Neil A. Pollio ret. 6-20-69 10 A. M. Room 506—for protective order—Lasker, J.

Docket Entries

June	24	Filed Notice of Settlement and Order—Defts. motion be hereby granted to the extent hereinafter set forth and is otherwise denied, etc. as indicated.—Tyler, J. mn
June	26	Filed Memo end. on motion filed June 17, 1969 —motion withdrawn so ordered—Lasker, J. mn
July	8	Filed pltffs. First Set of interrogs.
July	14	Filed defts. Notice of motion *re:* interrogs. ret. 7-17-69 10 A. M. Room 506
July	16	Filed deft's 9(f) affidavit.
July	16	Filed affidavit of Samuel N. Greenspoon in opposition to deft's motion.
July	18	Filed memo-endorsed on deft's motion filed 7-14-69: The deft's have until 8-6-69, to which to answer and or object to any interrogs of pltff. following argument. So ordered. Bonsak, J. m/n
Aug.	6	Filed deft's affidavit and notice of motion to vacate interrogs, ret. 8-28-69.
Aug.	6	Filed deft's objections to written interrogs.
Aug.	27	Filed affidavit of Samuel N. Greenspoon in opposition to deft's motion.
Sept.	19	Filed pltff's notice to take deposition of Guido Arrata.
Sept.	26	Filed stip and order that deposition of Guido Arrata is adjourned to 10-14-69, etc. Bryan, J.
Oct.	3	Filed report of Special Master, Gregory J. Potter.
Aug.	27	Filed affidavit of Neil A. Pollio—*Re:* Rule 9(f)
Oct.	3	Filed Memo Endorsed on deft's motion to vacate interrogs—filed 8-6-69—Deft's objections to interrogs 8 thru 23 & 34 thru 36, are sustained & all other respects deft's motion is denied. Answers to interrogs. shall be served within 20 days from the date of this order—McLean, J.—mailed notice.

Docket Entries

June	25	Filed opposing affidavit of Neil A. Pollio.
June	26	Filed in court—affidavit of Samuel N. Greenspoon.
June	26	Filed in court—9f affidavit of Samuel N. Greenspoon.
Oct.	14	Filed rebuttal affidavits of Louis Nizer.
Oct.	14	Filed memorandum and order—pltff. moves for an order directing deft. to inspect and copy documentary material. Accordingly, the motion is disposed of as indicated (see memorandum). Lasker, J. m/n
Oct.	22	Filed supplemental memorandum—memorandum dated October 14, 1969 is hereby amended as indicated. Lasker, J. m/n
Oct.	23	Filed deposition of Ferdinand Galic. m/n
Oct.	23	Filed continued deposition of Ferdinand Galic. m/n
Nov.	10	Filed deposition of Guido Arrata. m/n
Nov.	12	Filed deft's affidavit and notice of motion *re:* deposition, ret. 11-20-69.
Nov.	12	Filed memorandum submitted by deft. in support of motion.
Nov.	17	Filed pltff's affidavit and notice of motion *re:* interrogs, ret. 11-26-69.
Nov.	17	Filed pltff's memorandum of law in support.
Nov.	18	Filed pltff's memorandum in opposition to motion.
Nov.	18	Filed affidavit of Samuel N. Greenspoon in opposition to motion to suppress.
Nov.	25	Filed stip and order that deft's answer to interrogs. are deemed verified as of 11-19-69, and pltff's time to move against answers shall expire on 12-19-69. So Ordered—Croake, J.
Nov.	28	Filed memo. endorsed on motion filed 11-17-69 —Motion withdrawn. So Ordered—Croake, J.
Nov.	28	Filed stip and order that motion ret. 11-26-69 be withdrawn. So Ordered—Croake, J.
Dec.	2	Filed deft's answers to interrogs.

Docket Entries

1970

Jan.	5	Filed memorandum Opinion #36446—deft. moves for an order suppressing changes made by witness in deposition, etc. In conclusion, deft's motion is denied in whole. So Ordered —Croake, J. 11pp m/n
Jan.	14	Filed pltff's Note of Issue and statement of readiness.
Jan.	22	Filed stip and order that atty. for pltff. be substituted—Clerk.
Jan.	23	Filed deft's objections to Note of Issue.
Feb.	2	Filed pltffs affdvt in opposition to deft objections to Note of Issue
Feb.	3	Filed memo. endorsed on objections to note of issue filed 1-23-70—Objections to note of issue overruled, add case to trial calendar, ninety days to complete discovery. So Ordered—Tenney, J. m/n
Feb.	16	Filed deft's affidavit and notice of motion to produce & inspect, ret. 2-19-70.
Feb.	16	Filed deft's memorandum in support of application for discovery.
Feb.	18	Filed affidavit of Samuel N. Greenspoon in opposition to motion.
Feb.	18	Filed pltff's brief in opposition.
Feb.	17	Filed rule 9f affidavit of Neil A. Pollio.
Feb.	19	Filed in court—filed affidavit in reply of Neil. A. Pollio.
Feb.	20	Filed memo. endorsed on motion filed 2-16-70—Settle order on notice in accordance with the court's rulings following argument. Mansfield, J.
Mar.	6	Filed affidavit of Neil A. Pollio in support of proposed order.

Docket Entries

Mar.	6	Filed notice of settlement and order that by 3-10-70 pltff. shall submit documents to examiner J. Howard Haring, etc. He shall make tests as indicated and upon completion shall return documents and make report. Charges of the examiner to be shared equally. Mansfield, J. m/n
Mar.	16	Filed deft's first set of interrogs.
Mar.	25	Filed pltff's affidavit and notice of motion to strike interrogs. ret. 4-2-70.
Mar.	31	Filed affidavit of Neil A. Pollio in opposition to application to vacate written interrogs.
Apr.	16	Filed Memorandum Opinion #36706—Pltff. moves to strike interrogs. Accordingly, pltff's motion to strike interrogs. dtd. 3-16-70 is granted. So Ordered—Tenney, J. m/n
Apr.	20	Filed true copy of memorandum filed 4-16-70 with notice of entry
May	11	Filed order pursuant to Cal. Rules 6 & 13—Sugarman, Ch. J.
May	20	Filed Defendant's Designation of Trial Counsel.
May	20	Filed Plaintiff's Designation of Trial Counsel.
June	24	Filed pltff's affdvt & notice of motion to extend time to file pre trial memorandum to 7-6-70
June	24	Filed memo endorsed on motion filed this date —Motion to extend time to file pre trial memoranda to 7-6-70 is granted—Bryan, J. m/n
Aug.	3	Filed pltff's affdvt & notice of motion to remove hearing examiner ret. 8-18-70
Aug.	18	Filed stip that motion now ret. 8-18-70 be adjourned to 9-8-70.
Sept.	4	Filed opposing affdvt of Neil A. Pollio (for deft) in opposition to pltff's motion
Sept.	10	Filed reply affdvt of Samuel Greenspoon (for pltff) to opposing affdvt

Docket Entries

Sept.	10	Filed order granting pltff's motion & Mr. J. Howard Haring is removed as the Court appointed examiner of questioned documents & it is ordered that Court reserve jurisdiction to determine the reasonable fees of Mr. Haring—Mansfield, J. m/n
Sept.	15	Filed deft's affdvt & notice of motion for reargument of merits of pltff's application
Sept.	15	Filed supplemental affdvt of Neil A. Pollio (deft) in support of deft's motion
Sept.	15	Filed Opinion #37076—After reconsideration, motion for reargument is granted to extent that Mr. Haring is directed to complete his task & furnish his report to counsel for both sides & turn over the documents to pltff's counsel on 10-9-70, on the understanding that compensation for his services will be fixed by the Court. The additional time is granted for the reason that if another expert were to be substituted at this late date, the delay would be greater than period contemplated. So ordered—Mansfield, J. m/n
Sept.	15	Filed pltff's affdvt & notice of motion to extend time to file a joint pre trial memorandum from 7-6-70 to 9-18-70
Sept.	15	Filed stip & order that time for parties to file a joint or separate pre-trial memorandum is extended from 7-6-70 to 9-25-70—So ordered—Mansfield, J.
Oct.	6	Filed letter of J. Howard Haring *re* extension of time to file report dated 9-29-70
Oct.	6	Filed memo endorsed on letter filed this date—After reviewing Mr. Haring's letter & letters of counsel for pltff & deft, the time for Mr. Haring's submission of his report is extended until 10-15-70—So ordered—Mansfield, J. m/n

Docket Entries

Oct.	29	Filed letters of counsel to Tyler, J. dated 10-8, 10-9-70 *re* dispute between counsel
Oct.	29	Filed memo endorsed on letters filed this date—It has usually been held that counsel fees for extra-district examinations or depositions be deemed to cover or include reasonable travel time for opposing counsel. Here the deposition in question took place on 4-29, 4-30-69 & May 1-69 for which counsel concededly is entitled to $1500. In addition, I believe that opposing counsel is entitled to the allocated counsel fee of $500 a day for 2 days of travel—one day to London from NY & one day for return. This means that opposing counsel is entitled to counsel fees totalling $2,500 subject to later reallocation in accordance with other provisions of the paragraph 7 of the order—So ordered—Tyler, J. m/n
1971		
Feb.	23	Filed pltff's first supplement to its pre trial memorandum
May	6	Filed deft's first supplement to its pre trial memorandum
May	10	Filed deft's 2nd supplement to deft's pre trial memorandum
May	12	Filed deft's 3rd supplement to deft's pre trial memorandum
May	12	Filed deft's amended 3rd supplement to its pre trial memorandum
June	24	Filed deft's affdvt & notice of motion pursuant to Rule 9L to serve on pltff a request for production & inspection & to serve pltff with a notice to take deposition ret. 7-1-71
Oct.	15	Filed affdvt of Neil Pollio (for deft) in support of deft's motion to direct attys. for pltff to admit certain facts in pre-trial order

Docket Entries

Nov.	11	Filed deft's pre trial memorandum
Nov.	11	Filed pltff's pre trial memorandum
Nov.	11	Filed Consent Pre trial order—Pierce, J.
1972		
Feb.	8	Filed Deposition of witness Fuad Kabazi sealed & in vault rm. 602
June	30	Filed affdvt of Samuel Greenspoon (for pltff) *re* for denial of motion
July	1	Filed in Court reply affidvt of Neil Pollio (for deft) to opposing affdvt of pltff's counsel
Feb.	25	Filed memo endorsed on motion filed 6-24-72—Deft's motion for leave to serve a notice to take deposition of pltff's experts, Pearl & Martin Tytell & to serve upon pltff a request for production & inspection of documents prepared by them is granted. Deft. is directed to pay the experts a reasonable fee for time spent in taking of their oral deposition—So ordered —Cannella, J. m/n
Mar.	2	Filed deft's demand that pltff produce & permit deft to inspect documents
May	31	Filed Deft's notice of motion ret. June 15 1972 to produce letter.
June	8	Filed Pltff's notice of motion ret. 6-15-72 for an order purs. to R. 26(4) (C) FRCP and the order of Cannella J. dtd 3-21-72, directing the deft to pay to pltff's expert witnesses Martin & Pearl Tytell the sum of $2,000. for their reasonable fees for time spent in taking of their depositions.
June	12	Filed Affdvt of Samuel N. Greenspoon, atty for pltff *re:* deft's application *re:* analysis of laboratory testing.
June	12	Filed Memo in opposition to motion to require the pltff to produce.

Docket Entries

Sept.	26	Filed Special Master's Report.
Sept.	26	Filed Affidavit of Ordway Hilton.
Sept.	26	Filed Affidavit of Louis Nizer.
June	14	Filed Opposing Affidavit (of Louis Nizer).
Sept.	26	Filed Opposing Affidavit of Louis Nizer.
Sept.	26	Filed Affidavit of Samuel N. Greenspoon.
Sept.	26	Filed Memo. End. on motion papers filed 6/8/72. Plaintiff's motion is granted to the extent that the Court establish the fee to be paid to the Tytells for giving testimony at a total of $1200. Cooper, J. (mailed notice). (Motion #30)
Sept.	26	Filed Reply Affidavit of Louis Nizer (Motion #6)
Sept.	26	Filed Memo. End. on motion papers filed 5/31/72. Ordered that the defendant's motion is granted to the extent that upon the filing of an affidavit by Mr. Hilton setting forth the tests which he will perform, etc. then in that event pltf's. counsel shall deliver to Mr. Hilton plaintiff's exhibit G-30 for testing and analysis within 20 days. The examination shall conclude and the document returned to plaintiff's counsel within 30 days following the day on which it is furnished. So ordered, Cooper, J. (mailed notice)
Oct.	10	Filed Notice of Compliance by Dft.
Oct.	10	Filed Affidavit of Ordway Hilton.
Oct.	26	Filed Pltffs Order to Show Cause. Ret. 10/31/72 Cooper J. *Re:* inspection & examination of exhibit G-30, etc.
Nov.	2	Filed Opposing Affidavit of Louis Nizer.
Nov.	2	Filed Memo. End. on Show Cause filed 10/26/72. * * * We direct that until further court order no testing whatever be conducted by either side. We also direct that every care and precaution be exercised to properly pre-

serve the exhibit so that its value will not be diminished in any way when it comes to be examined at trial. Accordingly, this shall be considered our final determination on the issue of further testing of the exhibit before trial. So ordered. Cooper, J. (mailed notice)

1973

Jan. 24 Filed Affidavit of Louis Nizer.
Jan. 24 Filed Affidavit of John Van Voorhis.
Jan. 24 Filed Affidavit of Ordway Hilton.
Jan. 24 Filed Affidavit of Pearl L. Tytell.
Jan. 24 Filed Affidavit of Ordway Hilton.
Jan. 24 Filed Affidavit of Clyde Mason.
Jan. 24 Filed Reply Affidavit of Neil A. Pollio.
Jan. 24 Filed Memorandum and Order. Papers having been filed and considered (as ordered) the plaintiff is hereby directed to deliver the original document forthwith to defendant's expert, Mr. Ordway Hilton, in order that the various tests set forth in detail in the Hilton affidavit of 11/30/72 be performed, etc. as indicated. It is further ordered that if plaintiff so desires, it may select an expert to attend at each and every step taken by Mr. Hilton with respect to all tests encompassed by this order. Pltf's. expert is to observe and, if desired, make necessary notes, but in no wise interfere with the aforesaid tests, etc. So ordered. Cooper, J. (mailed notice).
Apr. 6 Filed Amendment to Pltff's Pre-Trial Memorandum. Filed third amendment to third supplement to deft's pre-trial memorandum.
June 28 Filed second amendment to third supplement to deft's pre-trial memorandum.

Docket Entries

Aug.	13	Filed pltfs. notice to take deposition—interrogatories. of deft. (as to Mr. Ordway Hilton)
Aug.	13	Filed pltfs. notice to defts. to answer interrog. (Arturo Rolfo)
Aug.	16	Filed contd. deposition of Dr. Armand Hammer taken on Feb. 9, 1968.
Aug.	16	Filed contd. deposition of Dr. Armand Hammer taken on Feb. 8, 1968.
Aug.	16	Filed continued deposition of Dr. Armand Hammer taken on May 9, 1968.
Aug.	16	Filed continued deposition of Richard Vaughan taken on Dec. 17, 1968.
Aug.	16	Filed deposition of Dr. C. James Blom taken on July 18, 1969.
Aug.	16	Filed continued deposition of Richard Vaughan taken on June 18, 1969.
Aug.	16	Filed contd. deposition of Dr. Armand Hammer taken on June 13, 1969.
Aug.	16	Filed deposition of Richard Vaughan taken on Dec. 19, 1968.
Aug.	16	Filed contd. deposition of Dr. Armand Hammer taken on May 8, 1968.
Aug.	16	Filed deposition of Dr. Armand Hammer taken on Feb. 7, 1968.
Sept.	10	Trial begun before Weinfeld, J. without a jury
Sept.	11	Trial continued
Sept.	12	Trial continued
Sept.	13	Trial continued
Sept.	17	Trial continued
Sept.	18	Trial continued
Sept.	19	Trial continued
Sept.	20	Trial continued
Sept.	21	Trial continued
Sept.	24	Trial continued
Sept.	25	Trial continued
Sept.	26	Trial continued

Docket Entries

Oct.	1	Trial Cont'd.
Oct.	2	Trial Cont'd.
Oct.	3	Trial Cont'd.
Oct.	4	Trial Cont'd.
Oct.	5	Trial Cont'd.
Oct.	9	Trial Cont'd.
Oct.	10	Trial Cont'd.
Oct.	11	Trial Cont'd.
Oct.	12	Trial Cont'd and concluded Decision Reserved.

1974

Jan.	24	Filed transcript of record of proceedings, dated Oct. 1-2-3-4-5- 1973
Jan.	24	Filed transcript of record of proceedings dated Oct. 9-10-11-12, 1973
Jan.	24	Filed transcript of record of proceedings, dated Sep. 10-11-12-13- 1973
Jan.	24	Filed transcript of record of proceedings dated Sep. 21, 24, 25, 26, 1973
Jan.	24	Filed transcript of record of proceedings, dated Sep. 17, 18, 19, 20, 1973
Feb.	19	Filed deft's. atty. notice of change of address: (as of 2/18/74) Phillips, Nizer, Benjamin, Krim and Ballon 40 West 57th St., NYC 10019 977-9700
Aug.	30	Filed defts. proposed findings of fact and conclusions of law.
Aug.	30	Filed pltfs. proposed findings of fact and conclusions of law.
Aug.	30	Filed defts. findings of facts and conclusions of law.
Aug.	30	Filed pltfs. comments and objections to defts. proposed findings and conclusions.
Aug.	30	Filed defts. comments addressed to pltfs. proposed findings of fact and conclusions of law.

Docket Entries

Aug.	30	Filed amendment to pltfs. pre-trial memorandum.
Aug.	30	Filed second supplement to pltfs. pre-trial memorandum.
Aug.	30	Filed 5th supplement to pltfs. pre-trial memorandum.
Aug.	30	Filed 3rd supplement to pltfs. pre-trial memorandum.
Aug.	30	Filed 4th supplement to pltfs. pre-trial memorandum.
Aug.	30	Filed pltfs. trial brief. Filed 8/6/73 Exhibit
Aug.	30	Filed defts. trial memorandum.
Aug.	30	Filed the hearsay, self serving and wholly incredible and fraudulent deposition testimony of pltfs. witnesses is clearly inadmissible and without any probative value whatsoever (by deft.)
Aug.	30	Filed defts. supplemental trial memorandum.
Aug.	30	Filed the Kabazi letter is wholly inadmissible, it is both hearsay and spurious and without evidentiary value, by deft.
Aug.	30	Filed The Galic, Kapazi and Arata depositions are admissible and probative of Galic's Activities in behalf of Joint Venture by deft.
Aug.	30	Filed pltfs. memorandum as to the deft. Kabazi letter.
Aug.	30	Filed pltfs. memorandum on permissibility of negotiations with the Libyan Govt. addtl. to the formal written application.
Aug.	30	Filed pltfs. memorandum on plfts. form objections to Galic's deposition.
Aug.	30	Filed the report of the impartial expert apptd. by the court with consent of both parties is admissible regardless of said experts unavailability by deft.
Aug.	30	Filed pltfs. contentions as to contracts between the parties.

Docket Entries

Aug.	30	Filed defts. memorandum in response to court's inquiries.
Aug.	30	Filed pltfs. post trial brief.
Aug.	30	Filed defts. answering post trial brief.
Aug.	30	Filed pltfs. reply brief.
Aug.	30	Filed pltfs. memorandum *re:* defts. objections.
Aug.	30	Filed pltfs. reply to defts. notice of objections and counter-designations.
Aug.	30	Filed deft. notice of objections and counter-designations of extracts from depositions and reservations.
Aug.	30	Filed pltfs. notice of extracts from depositions.
Aug.	30	Filed defts. notice of objections and comments to pltfs. reply designation of extracts from various depositions together with defts. further counter-designations from said depositions.
Aug.	30	Filed pltfs. notice that they filed objections to defts. Sur-Rebuttal designations.
Aug.	30	Filed Opinion #41129—Judgment in favor of the deft. may be entered accordingly. Weinfeld, J. m/n
Sept.	3	Filed deposition of Faud Kabazi taken on April 29, 1969.
Sept.	3	Filed contd. deposition of Ferdinand Galic.
Sept.	3	Filed contd. deposition of Ferdinand Galic taken on July 8, 1969.
Sept.	3	Filed cont'd. deposition of Ferdinand Galic taken on July 10, 1969.
Sept.	3	Filed contd. deposition of Ferdinand Galic taken on July 9, 1969.
Sept.	3	Filed contd. deposition of Ferdinand Galic taken on July 11, 1969.
Sept.	3	Filed contd. deposition of Ferdinand Galic.
Sept.	3	Filed contd. deposition of Galic.

Docket Entries

Sept.	3	Filed continued deposition of Ferdinand Galic taken on July 14, 1969.
Sept.	3	Filed deposition of Ferdinand Galic taken on July 7, 1969.
Sept.	3	Filed deposition of Mary L. Cullen taken on March 9, 1970.
Sept.	3	Filed deposition of James Deer taken on April 17, 1970.
Sept.	3	Filed memorandum to counsel *re:* amended to Opinion #41129 on page 19 and 45, Weinfeld, J. m/n
Sept.	5	Filed Judgment—Ordered that deft. have judgment against pltf. dismissing the complaint. Clerk. m/n entered on docket 9/10/74
Oct.	3	Filed pltfs. notice of appeal to the USCA from the judgment entered on Sept. 5, 1974 dismissing the complaint. (copies mailed)

1967

*Nov.	24	Filed stipulation for extension of time—Mansfield J. dtd: 11-22-67.

1970

*Sept.	15	Filed letter dated Sept. 14-70 from Daniel A. Pollack to Judge Mansfield.

1973

*Aug.	6	Filed plaintiff's proposed findings of fact and conclusions of law.

Amended Complaint.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

ALLEN & COMPANY,

Plaintiff,

against

OCCIDENTAL PETROLEUM CORPORATION,

Defendant.

Plaintiff alleges:

1. Plaintiff is a limited partnership engaged in the business of making investments and of investment banking with offices at 30 Broad Street, New York, N. Y.

2. On information and belief, defendant is a corporation organized and existing under the laws of the State of California, with an office for and transacting business at 1301 Avenue of the Americas, New York, N. Y.

3. In or about June or July 1964, plaintiff was interested in and offered the opportunity by one Ferdinand Galic to acquire or participate in the acquisition of oil concessions in the Kingdom of Libya, Africa.

4. In or about July or August, 1964, plaintiff submitted to the defendant the said opportunity, and the defendant received and accepted the plaintiff's submission on the understanding between the parties hereto that the plaintiff would have the right to participate in all projects undertaken by defendants in the Kingdom of Libya.

5. The plaintiff introduced said Ferdinand Galic to defendants in order that the parties herein might utilize Galic's intervention and services in relation to the matters

set forth in this complaint; and pursuant to the understanding of the parties set forth above, and in or about November and December 1964 plaintiff and defendant entered into an agreement by which they agreed to and did enter into a joint venture to acquire, develop, explore and exploit oil concessions in the Kingdom of Libya and they further agreed that defendant would take such concessions in its name or in the name of its nominee and that such concessions would become a joint asset of said joint venture and that all rights therein and flowing therefrom would be for their account and benefit according to their respective interests, and that defendant would manage the said venture and would share all such concessions turned up by said Ferdinand Galic on the basis of a 25% interest therein to the plaintiff and a 75% interest therein to the defendant and that they would share the profits and costs in the same percentages; and a memorandum dated December 17, 1964 in relation to the foregoing was signed by the parties herein, a copy of which is annexed hereto as Exhibit A.

6. On information and belief, and pursuant to said agreement for said joint venture between the plaintiff and the defendant, the defendant utilized the intervention and services of the said Ferdinand Galic on behalf of the said joint venture and the said Ferdinand Galic turned up two oil concessions located in the Sirte Basin, in the Kingdom of Libya, known as Concessions Number 102 and 103, covering approximately 610 and 728 square miles respectively, and introduced to the said joint venture the opportunity to acquire the same and rendered other forms of assistance from time to time to and in the acquisition of said concessions, and on or about February 20, 1966, the Kingdom of Libya awarded said concessions to the defendant as stated hereafter.

7. On information and belief, the defendant acquired and holds the said concessions in pursuance of the said

agreement and joint venture in the name of its wholly-owned subsidiary Occidental of Libya, Inc., which is merely an incorporated department of the defendant, and thereafter, as manager of the said joint venture the defendant, through its wholly-owned subsidiary, undertook to and has developed and explored said concessions and as of May 31, 1967 had completed a total of seven wells on Concession No. 102 capable of producing oil in commercial quantities and was drilling other wells therein; and as of May 31, 1967 the defendant, through its wholly-owned subsidiary, had completed a new field wild-cat well on Concession No. 103 and was drilling other wells therein.

8. Defendant has compensated said Ferdinand Galic on behalf of the said joint venture for his said intervention and services rendered to the parties as aforesaid; but in breach of its fiduciary obligation to plaintiff under said joint venture, the defendant has excluded the plaintiff from all interest in and to the said concessions and in and to the oil wells, oil reserves and oil produced or to be produced therefrom and has improperly used its position as manager of said joint venture to gain selfish advantages and benefits and defendant has excluded plaintiff from the profits and benefits derived and to be derived therefrom and threatens to continue to so deprive the plaintiff of its interest in and to the said concessions, the oil wells, oil reserves and oil produced and to be produced therefrom and to the profits derived and to be derived therefrom.

9. The plaintiff has at all times been ready, willing and able to contribute and to pay its share of the costs of the concessions and of the acquisition, exploration, development and exploitation thereof.

10. Plaintiff has demanded from the defendant that it disclose to the plaintiff the status of the concessions, any production resulting therefrom and any projects con-

templated, and to convey to the plaintiff the said 25% interest aforesaid; but the defendant refused and still refuses to recognize the rights of plaintiff and contends that plaintiff had and has no rights therein and the defendant refused and still refuses to furnish any information as to the acts done by it under the said joint venture and claims the said concessions as its own individual property, free from any claim of any kind of the plaintiff herein.

11. There has been no accounting by the defendant to the plaintiff of the said joint venture although the plaintiff has duly demanded that the said defendant so account.

12. On information and belief, by reason of the facts aforesaid, the plaintiff has been damaged in an amount exceeding $100,000,000. and still continue hereafter to be damaged in amounts presently unknown and unascertainable.

13. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against the defendant that:

1. The defendant and its wholly-owned subsidiary Occidental of Libya, Inc. be enjoined and restrained temporarily and permanently from any acts which are calculated to or may permit the creation of interests in said concessions superior in rank to the joint venture interest of plaintiff therein, including the assignment, transfer or encumbrance of said concessions, the oil wells, oil reserves and oil contained therein;

2. The defendant account to the plaintiff for all matters and things connected with or growing out of the said joint venture between the plaintiff and the defendant, and that the defendant pay over to the plaintiff all sums found to be due to the plaintiff upon the said accounting;

3. The defendant and its said wholly-owned subsidiary be adjudicated to hold said concessions and the oil wells, oil reserves, and oil contained therein in trust for the plaintiff to the extent of its interest therein, subject to the payment by the plaintiff to the defendant of any amount that may be found due upon the accounting to be payable to the defendant for plaintiff's 25% interest therein; or, in the alternative, that the plaintiff have judgment against the defendant in the sum of $100,000,000. plus all additional damages accruing between the date of this complaint and the date of entry of judgment herein, together with interest.

4. Plaintiff have such other and further relief in the premises as may be just and equitable together with the costs and disbursements of this action.

POLLACK GREENSPOON & SINGER
Attorneys for Plaintiff
Office & P. O. Address
111 Broadway
New York, N. Y. 10006
WOrth 4-5770

(Verified by Herbert Allen, October 13, 1967.)

Exhibit A, Annexed to Amended Complaint.

OCCIDENTAL PETROLEUM CORPORATION

10880 Wilshire Boulevard . Suite 1460

Los Angeles 24, California

Phones: 470-0110 . 477-5724

December 17, 1964

Office of the President

Mr. Herbert Allen
Allen & Company
30 Broad Street
New York, New York

Dear Herbert:

Confirming our recent conversation regarding possible concessions in Libya, we agree to the same arrangements with you on the possible second concessions as on the first concessions, namely, Occidental will share on the basis of 75% for us and 25% for you on anything Ferdinand Gallic turns up. This includes sharing costs and profits. To be mutually agreed upon.

If the above is satisfactory, please sign and return the enclosed copy.

With best regards.

Sincerely yours,

Occidental Petroleum Corporation
s/ Armand Hammer,
President

AH:dp

The above is agreed to.
Allen & Company
Herbert Allen

Answer to Amended Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Defendant, Occidental Petroleum Corporation, by its attorneys, Phillips, Nizer, Benjamin, Krim & Ballon, for its answer to the amended complaint of the plaintiff, respectfully alleges:

1. Admits each and every allegation set forth in paragraph "1" of the amended complaint.

2. Denies each and every allegation set forth in paragraph "2" of the amended complaint, except admits that it is a corporation organized and existing under the laws of the State of California.

3. Denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "3" of the amended complaint.

4. Denies each and every allegation set forth in paragraphs "4", "8", "9", "12" and "13" of the amended complaint.

5. Denies each and every allegation set forth in paragraph "5" of the amended complaint, except admits that plaintiff introduced Ferdinand Galic to defendant and that defendant, through its president, signed the letter dated December 17, 1964, annexed to the amended complaint as Exhibit "A" and initialled the handwritten change made by plaintiff on the face of said letter.

6. Denies each and every allegation set forth in paragraph "6" of the amended complaint, except admits that on or about February 20, 1966, the Kingdom of Libya announced that Occidental of Libya, Inc., had been awarded two concessions then described as Bid Blocks 42B and 44, which later became known as Concessions Numbers 102 and 103 respectively.

7. Denies each and every allegation set forth in paragraph "7" of the amended complaint, except admits that Occidental of Libya, Inc., is a wholly-owned subsidiary of defendant and that as of May 31, 1967 said subsidiary had completed on Concession Number 102 a total of seven wells capable of producing oil in commercial quantities and a new field wild-cat well on Concession Number 103, and was in the process of drilling other wells on each of said concessions.

8. Denies each and every allegation set forth in paragraph "10" of the amended complaint, except admits that plaintiff had made the demand referred to therein, and that defendant had rejected said demand for various reasons, including those set forth by plaintiff in paragraph "10" of its amended complaint.

9. Denies each and every allegation set forth in paragraph "11" of the amended complaint, except admits that there has been no accounting by defendant to plaintiff.

FIRST DEFENSE

10. The complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

11. Upon information and belief, plaintiff is guilty of unclean hands and is barred *in limine* from prosecuting this action. Plaintiff has also waived or forfeited any right it may have had to receive any participation in any of the oil concessions involved herein by reason of the fact that plaintiff, acting in concert with Ferdinand Galic, had, prior to the granting of any oil concessions to defendant by the Kingdom of Libya, and without the knowledge or consent of defendant, rendered assistance, financial and otherwise, for the sake of personal gain and secret profit,

to one of defendant's competitors in aiding said competitor to obtain oil concessions in Libya to defendant's prejudice, all in violation of their fiduciary duties to defendant.

THIRD DEFENSE

12. In or about August, 1964, plaintiff, through Ferdinand Galic, induced defendant to engage the services of one General de Rovin to assist defendant in obtaining oil concessions in Libya.

13. On or about March 16, 1965, plaintiff sent to defendant a document entitled "Summary of Miscellaneous Information on one 'General de Rovin'", dated March 9, 1965, together with a covering memorandum dated March 12, 1965, copies of which are annexed hereto as Exhibit "1". Said summary revealed that the real name of "General de Rovin" was Francois Fortune Louis Pegulu; that he had operated under various aliases and that he was a person of ill repute with a history of criminal convictions involving infamous crimes and fraud.

14. By letter dated July 16, 1965, defendant advised plaintiff that, as a result of defendant's communication dated March 16, 1965, it had cancelled its agreements with Ferdinand Galic and de Rovin and that accordingly defendant was released from any commitment towards plaintiff under the agreement dated December 17, 1964, annexed to the amended complaint as Exhibit "A". Plaintiff acquiesced in such release.

FOURTH DEFENSE

15. By letter dated July 16, 1965, defendant advised plaintiff that defendant had been released from any commitment towards plaintiff under the agreement dated December 17, 1964, annexed to the amended complaint as Exhibit "A".

16. Thereafter, on or about May 11, 1966, Allen & Company Incorporated, in connection with a proposed offering by defendant to the general public of $62,000,000 Convertible Subordinated Debentures, executed an "Underwriters' Questionnaire" wherein it made the following material representations:

> "(a) Neither we nor any of our directors, officers, or partners have a *material relationship* with the Company (defendant) * * *." (Italics supplied.)
>
> * * *
>
> "The answers to the foregoing questions are correctly stated to the best of the knowledge, information and belief of the undersigned [Allen & Company Incorporated]. The undersigned agrees to notify the Company [defendant] promptly of any changes in the foregoing information which may occur prior to the effective date of the Registration Statement".

17. In filing with the Securities & Exchange Commission a Registration Statement in connection with the said proposed offering, defendant accepted and relied upon the representations referred to in paragraph "13." above. Upon information and belief said representations were likewise relied upon by the general public in purchasing defendant's aforesaid debentures.

18. At the time these representations were made, Herbert Allen was the Chairman of the Board of Directors of Allen & Company Incorporated and a general partner of plaintiff; C. Robert Allen was the Vice Chairman of said Board of Directors and a limited partner of plaintiff and Charles Allen, Jr. was a member of said Board of Directors and a general partner of plaintiff.

19. At the time these representations were made, the Kingdom of Libya had already awarded to defendant's

wholly-owned subsidiary the oil concessions involved herein which fact was then known to plaintiff.

20. By reason of the foregoing, plaintiff is estopped from claiming any participation or interest in any of the aforesaid oil concessions.

FIFTH DEFENSE

21. Plaintiff had notice or knowledge of all the facts and of all the acts set forth in its complaint since February 20, 1966, and nevertheless refrained from commencing this action until September 27, 1967, and has thereby been guilty of such laches as should in equity bar plaintiff from maintaining this action in that defendant has been prejudiced by such delay.

WHEREFORE, defendant respectfully demands judgment dismissing plaintiff's complaint herein and granting defendant such other and further relief as to this Court may seem just and proper in the premises, together with the costs and disbursements of this action.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
By: /s/ Simon Rose
A member of said firm
Attorneys for Defendant
Office and Post Office Address:
1501 Broadway
New York, New York 10036
Tel. No. 947-7600

Of Counsel:

Mitchell, Silberberg & Knupp, Esqs.
6380 Wilshire Boulevard,
Los Angeles, California 90048
Tel. No. 213 OL 3-7511

Exhibit 1, Annexed to Answer.

ALLEN & COMPANY

ESTABLISHED 1922

30 Broad Street, New York, N. Y. 10004

March 16, 1965

Dr. Armand Hammer
Occidental Petroleum Corp.
10889 Wilshire Blvd.
Los Angeles 24, Calif.

Dear Armand:

The enclosed just came to my attention and I thought you should know about it immediately.

With kindest personal regards, I am

Sincerely,

HERBERT ALLEN

gc

enc.

KLEHE & CO.

Memorandum de:
a:

March 9th, 1965

Summary of Miscellaneous Information on one "General de Rovin"

The individual who is presently operating in Libya under the name of "General de Rovin" is neither a general nor is his name "de Rovin". His real name is:

PEGULU Francois Fortuné Louis

and it is worth noting that the initials of his first and middle names are F.F.L., the same as those of Forces Francaises Libres (the Free French Forces).

In the course of a very adventurous life, he has had several pseudonyms and titles and is known by the French Security Agency as well as by the French Police under the following names:

Pégulu de Rovin
Comte Pégulu de Rovin
Vicomte de Rovin
Comte Armand de la Rochefoucauld
Assoiant (airplane pilote)

F.F.L. Pégulu is of French nationality
Born on August 2nd, 1901, in Grenada (Spain)
Lives in Paris since 1960
He has two brothers:

Jean, born in Paris in 1903, Industrialist
Arrested as collaborationist.
Raoul, born in 1896 in Cadiz (Spain). Industrialist
Known as a collaborationist.

Pre-War

From 1926 to 1935, while in the real estate business, F.F.L. Pégulu committed big swindles in Berlin, Tangier, Alicante, Vienna, Lausanne, etc. He lived by his wits, numerous counterfeits, many crooked deals in the gambling world, and the passing of bad checks.

In 1934, he became a car salesman. On December 13th, 1935, he was sentenced to three years in jail and ten years of local banishment by the Court of Appeal of Paris. He was also sentenced in Vienna and Lausanne.

During the War

In October 1940, he bought a garage in Agen. He was adjudged bankrupt on February 23rd, 1946. At the

same time, he committed numerous unlawful deals. He was a middle man in the buying of rails and non ferrous metals. He dealt in black market. Was put in jail from 24 November 1941 to 26 February 1942.

On June 14th, 1944, a new decree from the prefect could not be carried out because the Germans considered this man necessary to their war production.

In 1943, he became interested in the press and created three newspapers: "l'Independant d'Agen", "l'Elite" and "le Petit Méridional de Montpellier".

Immediately after the Liberation and because he was known as a Gestapo agent, he was the object of a warrant of arrest. But as he had skillfully made some friends in the Resistance a few months before the Liberation, he managed to make himself call, at the beginning of 1945, a 1st class Chief Engineer in the Gunpowder Services, and a reserve officer with the rank of Lieutenant-Colonel.

Pursuant to this illegally acquired promotion, Pégulu was arrested on March 26th, 1945, and prosecuted before the Military Court for embezzlement, forgery, unlawful wearing of uniform and unauthorized assumption of rank (as regards this case, the charge was dismissed in 1946, under the amnesty law of April 16th, 1946).

Detained in the Cherche-Midi prison and later in the Val-de-Grâce hospital, he escaped on April 26th, 1956.

For dealings with the enemy, he was sentenced to death in abstentia on June 19th, 1946, by the Court of Justice of the Department of Lot-et-Garonne. On May 17th, 1961, the Military Court of Bordeaux pronouncing a judgment after full argument on both sides, acquitted the individual involved.

After the War

From April 1946 to 1957, Pégulu lived abroad (Canada, Spain, Portugal, South America, etc.), living by his wits, passing bad checks, among others.

Exhibit 1, Annexed to Answer

In July 1955, he managed to obtain a passeport under the assumed name of "de Rovin", by the French Consulate in Rosario (Argentina). This passeport having been granted to him in error, the individual concerned was the object, in May 1956, of a general circular issued by the Ministry of Foreign Affairs and sent to all French diplomatic and consular agents abroad in view of withdrawing this passeport.

In this circular, Pégulu is described as follows: "This individual, subject to a warrant of arrest issued March 15th, 1945, was sentenced to death in abstentia for treason and several other crimes; he has committed swindles in France and various other countries in Europe and America.

Since his return to France in 1957, Pégulu, who claims to be a civil engineer, continues his very shady business practices.

On July 1st, 1960, he succeeded to the position of assistant Director and General Manager of the Paul Bernard Company, with the responsibility of re-establishing the failing company. After several weeks, he squandered the capital, causing the stoppage of payments. He was dismissed on November 18th, 1960.

For these reasons, many civil claims have been filed against him. *At present*, Mr. Pierre Seguy, investigating magistrate, is investigating a charge for the breaking of corporate laws. A preliminary investigation by the Financial Investigators of the Paris Police Headquarters has confirmed the heavy charges against this individual.

In the financial world where he has been known for passing bad checks again in 1960, Pégulu has no credit standing.

Enclosed, text of the note of information regarding Mr. Pégulu alias "General de Rovin", and copy of the telegram sent to him on March 8th in agreement with Mr. Charles Torem.

AM/gm

Pre-Trial Order.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

On April 23, May 12, October 6, and 15, 1971, the parties to this action or their attorneys appeared before the Court at a pre-trial conference, pursuant to Local Calendar Rules 6 and 13 and Rule 16 of the Federal Rules of Civil Procedure and the following action was taken:

1. The pleadings were agreed to be in accordance with the framing of the issues in this action in paragraph 9 of this pre-trial order.

2. The parties agreed that the trial of this action should be based upon this order and upon the pleadings.

3. (a) The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):

1. Plaintiff is a limited partnership organized and existing under the laws of the State of New York, and all of its partners were at the time this action was commenced citizens of the State of New York.

2. Defendant is a corporation organized and existing under the laws of the State of California with its principal place of business in California and has no principal place of business in the State of New York.

3. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000. The contract in suit involves two oil concessions in Libya awarded by the Kingdom of Libya in 1966.

4. Plaintiff is now and has been for many years in the business of making investments and of investment banking; its office for at least the last 15 years has been and is now located at 30 Broad Street, New York, N. Y.

4. (a) At all material times the managing partners of said plaintiff were Charles Allen, Jr. and his brother Herbert Allen, Sr.

4. (b) Allen & Company, Incorporated, is a New York corporation engaged in the business of making investments and of investment making organized on or about March 10, 1964. Said corporation was organized to carry on the same type of business previously handled by the partnership and commenced business on or about September 18, 1964.

5. Occidental of Libya, is a Delaware corporation and a wholly-owned subsidiary of defendant.

6. At all relevant times herein (i) Dr. Armand Hammer was the Chief Executive officer and a director of defendant and of Occidental of Libya, Inc.; (ii) Mr. Richard W. Vaughan was an officer of defendant and of Occidental of Libya, Inc.; and Dr. C. James Blom was an employee of the defendant.

7. Prior to September 1964, Herbert Allen, Sr., a general partner of plaintiff, advised defendant that a Mr. Ferdinand Galic, a personal friend of Charles Allen, Jr., might be helpful in obtaining oil concessions in Libya.

8. In September 1964, in London, England, Armand Hammer met Ferdinand Galic for the first time face to face and was introduced to him by Herbert Allen, Sr. In September, 1964 in London, England, defendant confirmed in writing separate arrangements it had made with Ferdinand Galic, a General de Rovin and Taher Ogbi on that occasion; each writing was dated September 18, 1964, bore the signatures of the respective parties, and related to oil concessions in Libya.

9. On November 25, 1964 defendant wrote to Pierre Frottier plaintiff's Exhibit 30.

9A. On November 25, 1964 defendant wrote Ferdinand Galic defendant's Exhibit G-13. This letter was received by Ferdinand Galic.

10. By letter dated December 17, 1964, defendant wrote to Herbert Allen with regard to possible oil concessions in Libya and forwarded said writing to Herbert Allen with the request that if it was satisfactory then Herbert Allen should sign and return it.

11. Herbert Allen made a change in his own handwriting on the face of the letter dated December 17, 1964 and returned it to defendant for its acceptance under a letter dated December 24, 1964, wherein Herbert Allen stated:

> "I am returning herewith your letter of December 17th in duplicate with just one major change and that is, that the cost should be 'to be mutually agreed upon' and I have initialed same.
>
> "If there is no disagreement in this matter will you be kind enough to send me an initialled copy for my files."

12. The change made by Herbert Allen was accepted and initialed by defendant and the writing was retuned to plaintiff under defendant's letter dated December 28, 1964.

13. In 1965, the Kingdom of Libya publicly announced that it was accepting bids for oil concessions in Libya and invited companies to submit and file such bids not later than July 29, 1965.

14. By letter dated March 16, 1965 Herbert Allen forwarded to defendant a report, dated March 9, 1965, concerning General de Rovin which had been prepared by

Klehe & Company, a French banking house. The plaintiff had a minority financial interest in Klehe & Company in March 1965.

15. On or about July 16, 1965, defendant advised plaintiff in writing that by reason of the said report on de Rovin, it had sent the telegrams, copies of which were enclosed to Galic and to de Rovin, which telegrams stated in substance that defendant would not use the intervention of Galic and de Rovin in acquiring oil and gas concessions in Libya, that defendant considered itself free of any obligation toward them and that defendant released them from any obligation to abstain from negotiations with any other party.

16. The said writing from defendant to plaintiff dated July 16, 1965 further stated that defendant's agreement with Ogbi dated September 18, 1964 was cancelled on June 19, 1965, that any association with de Rovin would prejudice any possibility of getting any concessions in Libya and concluded:

> "In light of the above, our agreement of December 17, 1964, releases us from any commitment toward Allen & Company. You are likewise free to make any other arrangements you wish."

17. Plaintiff did not reply in writing to the defendant's letter dated July 16, 1965 at any time in 1965 or 1966.

18. Under letter dated July 29, 1965 defendant submitted in a sealed package an application for oil concessions in Libya; the submission consisted of a bid for petroleum concessions and a proposal for the development of a chemical fertilizer industry and an agricultural project.

19. Defendant's application for concessions according to plaintiff's Exhibit 10, a paper produced by defendant,

involved Blocks 42B and 43 or Blocks 43, 44 and 47. The four applications for concessions submitted by Elwerath and Wintershall involved Blocks 42B, 43 and 47 and four additional blocks according to said plaintiff's Exhibit 10.

20. According to plaintiff's Exhibit 10 produced by defendant, the total number of applications or bids submitted was 120; these applications or bids were submitted by thirty (30) companies or combinations of companies as shown on said exhibits. Included among the American applications were Esso, Phillips Petroleum, Sun Oil, Mobile, Gulf, Sinclair, Cities Service, Richfield, Texaco and Atlantic.

21. On July 31, 1965 the applications and bids of the various companies for oil concessions in Libya were opened by the Minister of Petroleum Affairs of the Kingdom of Libya in Beida, Libya. At the time of the opening representatives of some or all of the bidders were present. Some one from the office of the Ministry of Petroleum Affairs signed or initialled one copy of each application.

22. In 1965 and 1966 the chairman or president of the Libyan High Council of Petroleum Affairs was the Minister of Petroleum Affairs.

23. On February 20, 1966, the Libyan government officially announced the award of oil concessions over the local radio. On that occasion awards were announced in the name of Occidental of Libya, Inc. with regard to Blocks 42B and 44, which later became known as concessions numbered 102 and 103 respectively.

24. On March 29, 1966 formal concession agreements were entered into between Occidental of Libya, Inc. and the Kingdom of Libya, with regard to concessions numbered 102 and 103 respectively, which agreements are still in full force and effect today.

25. Between the date the defendant submitted the application for concessions in Libya (July 29, 1965) and the date the awards of concessions were officially announced by the Libyan government over the radio (February 20, 1966) Mr. Fuad Kabazi was the Minister of Petroleum Affairs of the Kingdom of Libya. According to Mr. Kabazi he held that office from March 1964 through April 4, 1967.

26. The copies of plaintiff's Exhibits 74 and 74A, supplied by defendant's counsel to plaintiff's counsel, do not mention Galic or plaintiff.

27. On June 17, 1966, defendant made a public offering of convertible subordinated debentures in the amount of $61,186,300 through various underwriters including Lehman Brothers, Allen & Company, Incorporated and Reynolds & Co.; the lead underwriter was Lehman Brothers; each underwriter named above agreed to purchase 10% of the unsubscribed debentures of said offering. The debentures which Allen & Company, Incorporated agreed to purchase were sold by it immediately upon the registration statement becoming effective.

28. The prospectus issued by defendant in connection with said offering of debentures was dated June 17, 1966 and was supplemented under date of July 6, 1966. Mention of Libyan oil concessions appears on pages 23-24 of said prospectus.

29. With respect to said registration of debentures, Allen & Company, Incorporated signed a questionnaire form dated May 11, 1966, wherein it said:

> "Neither we nor any of our directors, officers or partners have a material relationship with the company. * * *"

30. Plaintiff's counsel knew of all of its affairs with Occidental.*

31. On May 11, 1966, Herbert Allen was Chairman of the Board of Directors of Allen & Company, Incorporated; Charles Allen, Jr. and Herbert A. Allen were directors; C. Robert Allen was executive vice-president and Herbert A. Allen was a vice-president thereof.

32. Allen & Company, Incorporated did not sign any other questionnaire or change the statement quoted in Item 29 in any document signed by it in relation to said offering of debentures.

33. Charles Allen, Jr. did not after May 11, 1966 ask Allen & Company, Incorporated to file an amended underwriters' questionnaire so as to indicate there was a material relationship of plaintiff.

34. Allen & Company, Incorporated did not advise its customers of plaintiff's claimed interest in the said Libyan oil concessions either prior or subsequent to the purchase by said customers of said debentures.

35. On January 31, 1967, the Wall Street Journal published an article mentioning oil discovery in Libya by defendant.

36. On January 31, 1967, plaintiff wrote to defendant concerning a 25% interest in the Libyan oil concessions.

37. Between July 16, 1965 and January 31, 1967 plaintiff never claimed any deduction for its proportionate share of the expenses incurred by defendant, if any, with

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*Plaintiff contends that in addition to objection as to materiality and relevancy, this is subject to the attorney-client privilege objection as raised on page 211 of the deposition of Charles Allen. Defendant contends that the attorney-client privilege is inapplicable or waived on deposition or otherwise.

regard to the Libyan oil concessions in any partnership tax return it filed, which tax returns were filed on a cash basis.

38. Between July 16, 1965 and January 31, 1967, plaintiff did not make any provision with regard to its proportionate share of the expenses incurred by defendant in connection with said Libyan concessions on its financial books which were maintained on a cash basis.

39. By letter dated February 11, 1967, defendant rejected any claim of plaintiff in said Libyan oil concessions.

40. Mr. J. Howard Haring, pursuant to the order of this Court, dated March 4, 1970, examined two documents previously marked as plaintiff's Exhibit G-30 and as defendant's Exhibit 8A, and subsequently filed a report with the Court.

Defendant has requested plaintiff to admit the following facts, which plaintiff has refused to do and has in fact denied such facts before the Pre-Trial Judge:

1. That at all material times the controlling partners of said partnership were Charles Allen, Jr. and his brother Herbert Allen, Sr.

2. That Allen & Company, Incorporated was located on the same floor of the partnership at 30 Broad Street, New York, N. Y., and from October 1964 to the beginning of 1967 the corporate employees were paid with funds supplied by the partnership.

3. That Herbert Allen, Sr. had discussed his letter of January 31, 1967 with his attorney before mailing it to the defendant.

4. That between July 16, 1965 and January 31, 1967, plaintiff never made any inquiry of defendant with regard to the cost of expenses of the Libyan concessions

or made any offer to pay to defendant its proportionate share thereof.

3(b). Neither party admits or concedes that the other party's contentions accurately reflect the issues in this case as shown by the pleadings and each party reserves the right to object to the other's contentions upon any ground whatsoever.

It is the plaintiff's contention that:

1. Plaintiff contends that in or about September to December 1964 it entered into a joint venture with the defendant for the purpose of obtaining and exploiting oil and gas concessions in the Kingdom of Libya; that the parties are to share profits, losses and expenses therein 25% to plaintiff and 75% to defendant; that the joint venture is to embrace all oil or gas concessions in Libya "turned up" by Ferdinand Galic; and that defendant was to be the manager of the venture and the managing venturer.

Plaintiff further contends that on February 20, 1966 two concessions were obtained in the Kingdom of Libya; that defendant took the concessions in the name of its wholly-owned subsidiary, Occidental of Libya, Inc.; that said concessions were "turned up" by Ferdinand Galic or alternatively the defendant interfered with and prevented Galic from turning up said concessions; that defendant is estopped from contending that Galic did not turn up said concessions; and defendant has waived any requirement that Galic turn up said concessions; that defendant's claimed termination of the joint venture is null and void and in breach of its fiduciary duties to the plaintiff, and that defendant failed to disclose to and concealed from the plaintiff material matters relating to the venture; that defendant waited to advise plaintiff of its attempt to terminate the venture until it was too late for plaintiff to act with respect to oil concessions in Libya.

To the extent that defendant's contentions are inconsistent with plaintiff's contentions they are denied by plaintiff.

Defendant has long subsequent to the filing of its pre-trial memorandum attempted to supplement its contentions by setting forth what it says are sections of the law of the Kingdom of Libya. Defendant says that at the pre-trial hearing on April 23, 1971, the Special Master directed that said alleged provisions of the law should be included in defendant's contentions and that unless denied by plaintiff in the pre-trial order would be deemed admitted for purpose of trial.

The Special Master made no such direction; he merely stated that defendant could assert the alleged provisions as part of its contentions and if they were not denied they would be admitted. The Special Master made no order or directive that such would be deemed admitted if not denied in the contentions but apparently was stating what he considered the law to be.

Plaintiff states that it has no reason to believe that the provisions are as set forth by defendant and hence it denies the same.

Plaintiff further contends that defendant has failed to account to plaintiff for said joint venture and the revenues, profits and expenses thereof.

2. Plaintiff is entitled to an accounting of the venture and of its expenses, revenues, and profits, or in the alternative plaintiff is entitled to recover damages measured by 25% of the profits of the venture after eliminating any and all improper expenses attributed thereto by defendant.

3. (c) See proviso which introduces Item 3(b).

It is the defendant's contentions that:

1. That Exhibit "A" annexed to the complaint did not create any joint venture between the parties in that it

lacked the legal pre-requisites necessary for the formation of such a venture.

2. That Exhibit "A" annexed to the complaint did not create any valid enforceable agreement between the parties in that it was merely an agreement to agree in the future. In that connection, the evidence will show that before accepting Exhibit "A" to the complaint on behalf of the plaintiff, Herbert Allen, after consultation with counsel, made a major change on the face of said exhibit in his own handwriting so as to make it very clear that the amount of plaintiff's investment in any such venture had to be first agreed to by plaintiff before defendant could incur any costs on its behalf in connection therewith. The evidence will further show that the amount of plaintiff's investment was never mutually agreed upon by the parties prior to defendant's withdrawing its consent to any such arrangement.

3. That Exhibit "A" was terminable at will by either party and that defendant had elected to terminate the same in writing prior to the submission of any sealed bid for oil concessions in Libya. In that connection, the evidence will show that by letter dated July 16, 1965 defendant terminated whatever relationship it had with plaintiff with regard to the subject matter of Exhibit "A" annexed to the complaint; that on July 29, 1965 defendant submitted its sealed competitive bid in accordance with the Libyan Petroleum Law; that on July 31, 1965 all the sealed bids were opened in the presence of the representatives of the various oil companies; that between July 31, 1965 and February 20, 1966, the various bids were reviewed by the High Council of Petroleum Affairs and by the Full Cabinet of the Kingdom of Libya as required by Libyan law; and that on February 20, 1966 the Libyan Government announced over the radio the granting of two oil concessions to defendant.

4. That defendant's termination of Exhibit "A" was acquiesced in by said plaintiff. In that connection, the evidence will show that defendant's letter of termination was dated July 16, 1965 and that plaintiff never disputed or questioned said termination in writing.

The evidence will further show that subsequent to the receipt of said termination letter by plaintiff and to the granting of the two oil concessions to defendant by the Kingdom of Libya, the plaintiff's corporation filed an Underwriters' Questionnaire dated May 11, 1966 with the Securities and Exchange Commission in connection with defendant's Convertible Subordinated Debenture Issue involving approximately $62,000,000, wherein it represented that as of May 11, 1966, plaintiff had no material relationship with defendant with regard to the Libyan oil concessions which were referred to by defendant in its prospectus issued to the general public.

The evidence will also show that although plaintiff was aware of various expenses incurred by defendant in connection with the Libyan oil concessions subsequent to its receipt of defendant's termination letter, it never made any offer to pay its share of said expenses, nor made any inquiry with regard to the nature and amount of these expenses or other expenses incurred by defendant in connection with said concessions, nor did it make any provision with regard to said expenses or payment thereof in any of its financial or tax records or returns.

The evidence will further show that the first time plaintiff made any inquiry with regard to its alleged rights under Exhibit "A" annexed to its complaint following its receipt of defendant's termination letter dated July 16, 1965 was by letter dated January 31, 1967 which was prepared by plaintiff's counsel and forwarded to defendant subsequent to plaintiff's learning that defendant had discovered oil in Libya.

5. That plaintiff has forfeited whatever rights it had against defendant under Exhibit "A" annexed to its complaint by reason of its assisting one of defendant's competitors in submitting a sealed bid in competition with defendant's bid with regard to a certain concession site, which was later awarded to said competitor by the Libyan Government. In that connection, the evidence will show that Galic prior to the termination of his services by defendant had offered to assist a German group with the knowledge and consent of plaintiff in obtaining oil concessions in Libya, and that a German company known as Wintershall had submitted a competitive sealed bid for a certain concession which was likewise sought by defendant in its sealed bid, and that the Libyan Government had awarded said concession site to Wintershall and not to defendant.

Plaintiff contends that Exhibit "A" to its complaint created a valid and enforceable joint-venture agreement between the parties (which defendant disputes); consequently, on plaintiff's own theory of its case it would have violated its fiduciary duty to defendant in assisting defendant's competitor in acquiring oil concessions in Libya to defendant's determient and therefore is deemed to have forfeited whatever rights it had in the alleged joint venture.

6. That defendant had obtained the concessions in question as the result of tough competitive bidding in accordance with Libyan Petroleum Law and not as the result of any efforts or intervention of Mr. Ferdinand Galic, whose services were terminated by defendant prior to the submission of its sealed bid to the Libyan Government.

In that connection, the evidence will show that under Libyan Petroleum Law concessions are awarded on the basis of sealed competitive bids, and that concessions are granted to those applicants who offer the best possible terms and advantages to the Kingdom of Libya.

Article 7(1), (2) and (7) of the Libyan Petroleum Law provided:

"Article 7

"Applications for Concessions

"(1) The Ministry of Petroleum Affairs shall announce from time to time by notice published in the local and World Press the areas in respect of which concessions may be applied for.

"(2) The Ministry of Petroleum Affairs shall by notice published in the local and World Press invite those who wish to apply for concessions in the areas mentioned in paragraph (1) of this Article to submit their applications in triplicate in a sealed envelope delivered to the Main offices of the Ministry of Petroleum Affairs. The Ministry of Petroleum Affairs shall fix a closing time and date for the delivery of the applications and shall not consider any application which is delivered after such time and date.

* * *

"(7) The applicant may include in his application particulars of any economic and financial benefits and advantages and other things which he is willing and able to offer in addition to those stated in this Law and Second Schedule hereto."

Article 5 of the Libyan Petroleum Law provided:

"Article 5

"Eligible Applicants

"(1) The Ministry of Petroleum Affairs shall consider applications for permits or concessions submitted by eligible applicants only, and in determining the eligibility of any applicants the Min-

istry of Petroleum Affairs shall have regard to the following:

"a) The furtherance of the public interest.

"b) i) The applicant's compliance with relevant laws and regulations.

ii) his previous activities in the petroleum industry.

iii) his previous experience in the conduct of similar operations.

iv) his financial and technical capacity to conduct the contemplated operations.

"(2) In determining the eligibility of an applicant who is a subsidiary of a company or a member of a group of companies, there shall be taken into consideration the possession of the aforesaid qualifications by the parent company or group of companies of which he is a member and the extent of the availability to the applicant of such qualifications."

Defendant had requested plaintiff to concede the accuracy of said provisions in the pre-trial order which were taken from exhibits marked in the course of the depositions, but plaintiff has refused to make such concession. At the pre-trial hearing of April 23, 1971, the Special Master directed that said provisions be included within defendant's contentions and that unless denied by plaintiff in the pre-trial order would be deemed admitted for purpose of trial.

The evidence will further show that all the sealed bids were opened in the presence of all concerned, that they were processed and reviewed by a working committee of three before being forwarded to the High Council of Petroleum Affairs in accordance with Libyan Petroleum

Law consisting of nine members, five of which are members of the Cabinet of Ministers, for its recommendations.

Article 7(3), (4) and (5) of the Libyan Petroleum Law provided:

> "(3) The Ministry will invite registed [*sic*] mail applicants for concessions to send a representative to the Ministry's offices on a fixed day and hour to attend the opening of the applications for concessions. If the representative of the applicant fails to attend at the fixed hour and date this shall be considered as a refusal of invitation. Applications will be opened by those entrusted by the Ministry to do so in the presence of the applicants who accepted the invitation. The first copy of each application will be signed by those entrusted to open them and by the representatives of the applicants who accepted the invitation.
>
> "(4) It shall not be permissible to amend or vary an application after it has been opened and signed as mentioned in paragraph (3) hereof.
>
> "(5) The Ministry shall send a copy of each application to the Minister."

Article 2 of the Libyan Petroleum Law provided:

> "Article 2
>
> "High Council of Petroleum Affairs
>
> "(1) A Council shall be formed in the Ministry of Petroleum Affairs under the name 'High Council of Petroleum Affairs,' consisting of:
>
> "a) Minister of Petroleum Affairs—Chairman
>
> "b) Minister of Finance—Member
>
> "c) Minister of National Economy—Member

"d) Minister of Planning and Development—Member

"e) Minister of Industry—Member

"f) Governor of the Bank of Libya—Member

"g) Three members with experience in fields of Petroleum Affairs or Finance or Economy or Industry or Law. They will be appointed by the Council of Ministers for two years renewable. The same decision shall fix their remuneration.

"The Council may ask for the help of any of those whose opinion or experience may be required.

"(2) The High Council for Petroleum Affairs shall be concerned with:

"a) Studying petroleum policy within the State's General Policy.

"b) Studying the best means for preserving and exploiting the oil wealth.

"c) Expressing views on drafts of laws and regulations related to Petroleum Affairs as well as on matters which the Minister of Petroleum Affairs may present to the Council.

"d) Expressing views on granting or cancelling concessions, accepting or surrendering them up, and on the decisions to recourse in arbitration, and on fixing the time for opening the applications for concessions.

"(3) Matters in paragraphs 'd-e' should be passed to the Council of Ministers for approval before any final decision is taken on them.

Article 5 of the Libyan Petroleum Regulations provided:

> "Art. 5 of the Regulation No. 1 of 1964 effective 8/10/64
>
> "Decisions of the Council shall be taken by a majority vote of the members present; in the case of an even vote the President shall have a casting vote."

Defendant has requested plaintiff to concede the accuracy of said provisions in the pretrial order which were taken from exhibits marked in the course of the depositions, but plaintiff has refused to make any such concession. At the pretrial hearing of April 23, 1971, the Special Master directed that said provisions be included within defendant's contentions and that unless denied by plaintiff in the pretrial order would be deemed admitted for purpose of trial.

The evidence will further show that the recommendations of the High Council of Petroleum Affairs were then submitted to the Full Cabinet of Libya, consisting of twenty ministers for their review and final approval.

Article 22(3) of the Libyan Petroleum Law provided:

> "Art. 22
>
> "Penalties
>
> * * *
>
> "(3) Any public official or employee who has been entrusted with or who has come to know of any confidential information by virtue of this law and who divulges such information shall be liable to the penalties provided for in Article 236 of the Penal Code."

Article 236 of the Libyan Penal Code provided:

> "Every public official who in breach of the duties of his office or by the abuse thereof divulges of-

ficial information which should remain secret or who by any means whatsoever facilitates the divulging thereof shall be punished by a penalty of detention for a period of not less than four months."

Article 8 of the Libyan Regulations provided:

"Art. 8

"All duties, debates, recommendations and decisions (resolutions) of the Council shall be treated as secret with the exception of the recommendations and resolutions decided to be open by the Council, in which case the President of the Council shall publish such recommendations and resolutions in the usual manner."

Defendant has requested plaintiff to concede the accuracy of said provisions, most of which were taken from exhibits marked in the course of the depositions, but plaintiff has refused to make any such concession. At the pretrial hearing of April 23, 1971, the Special Master directed that said admissions be included within defendant's contentions and that unless denied by plaintiff in the pretrial order would be deemed admitted for purpose of trial.

The evidence will further show that after the Council of Ministers had made their final determinations, the award of concessions was officially announced by the Libyan Government over the Libyan radio on February 20, 1966, as a result of which defendant received the two concessions in suit.

The evidence will also show that the award to defendant was based entirely upon the merits of its sealed submission and that its application was reviewed by all of the members of the High Council of Petroleum Affairs as well as by all the Ministers making up the Libyan Cabinet solely on the basis of its contents.

7. That plaintiff is estopped from asserting any claim against defendant with regard to the Libyan oil concessions by reason of its prior representations and admissions to the Securities Exchange Commission and to the general public in connection with defendant's debenture issue disclaiming any material relationship with defendant with regard to said concessions upon which defendant and third parties relied in issuing and in purchasing said debentures. The relevant facts are as follows: Exhibit "A" to the complaint is dated December 17, 1964. On July 16, 1965 defendant sent plaintiff its termination letter. On July 29, 1965 defendant submitted its sealed bid to the Libyan Government. On February 20, 1966 the Libyan Government announced the granting of two oil concessions to defendant. On May 11, 1966 plaintiff disclaimed any material relationship with defendant with regard to said concessions in a written instrument filed with the Securities and Exchange Commission in connection with defendant's public issue of approximately $62,000,000 worth of debentures. Plaintiff's corporation was one of the Underwriters involved in said public issue for which it received compensation and fees as the result of the sale of said securities. The prospectus issued by plaintiff and defendant expressly made reference to the two oil concessions awarded by the Kingdom of Libya, which concessions together with plaintiff's disclaimer of interest were relied upon by the public in purchasing defendant's entire issue immediately upon its effective date in July 1966. On January 31, 1967, plaintiff for the first time made any claim to said concessions which was rejected by defendant prior to the commencement of the instant action. The evidence will further show that at no time either prior or subsequent to the bringing of the instant action did plaintiff make any attempt to amend or correct the disclaimer previously filed with the Securities and Exchange Commission.

8. That by reason of its delay in asserting any claim under Exhibit "A" to its complaint, plaintiff is guilty of laches sufficient to bar said plaintiff from maintaining the instant action. As shown above, plaintiff refrained from making any claim with regard to the Libyan oil concessions until more than eighteen (18) months after receipt of defendant's termination letter. In the interval, defendant has changed its position to its detriment by reason of plaintiff's delay, the nature of which appears in the deposition of defendant's chief executive officer beginning at page 846.

9. In the course of the various depositions, plaintiff has implied that Galic had assisted defendant in acquiring the concessions in question through unlawful and illegal means which has been unequivocally and emphatically denied by defendant. In the event, however, that plaintiff attempts to renew the implication at the trial, then upon plaintiff's own theory of the case the Court would have no alternative but to dismiss its action in view of the well-settled principle governing illegal transactions and the refusal of the Court to grant any relief to either of the parties other than to leave them in the position it finds them.

10. By its action, plaintiff seeks a proprietary interest or a twenty-five percent assignment in defendant's Libyan oil concessions which is beyond the jurisdiction of this Court by reason of Libyan statutory law.

Article 1 of the Libyan Petroleum Law provides:

"Article 1

"Petroleum Property of State

"(1) All petroleum in Libya in its natural state in strata is the property of the Libyan State.

"(2) No person shall explore or prospect for, mine or produce petroleum in any part of Libya,

unless authorized by a permit or concession issued under this Law."

Article 17 of the Libyan Petroleum Law provides:

"Article 17

"Assignment of Permits and Concessions

"Permits and concessions shall not be assigned except with the written consent of the Ministry which may impose any conditions which it may deem appropriate in the Public interest."

Defendant has requested plaintiff to concede the accuracy of said provisions which were taken from exhibits marked in the course of the depositions, but plaintiff has refused to make any such concession. At the pre-trial hearing of April 23, 1971, the Special Master directed that said admissions be included within defendant's contentions and that unless denied by plaintiff in the pre-trial order would be deemed admitted for purpose of trial.

11. Plaintiff is neither entitled to an accounting nor damages.

To the extent that plaintiff's contentions are inconsistent with defendant's contentions they are denied by defendant.

4. (a) The exhibits which each party now expects to offer at the trial are those identified in the memoranda heretofore filed pursuant to local Calendar Rule 13(b) III g. Should any party hereafter decide to offer additional exhibits, prompt notice of that fact shall be given to the other party and to the Court by serving and filing a supplemental pre-trial memorandum. The supplemental pre-trial memorandum may be in a short-form statement filed with the deputy clerk for calendars unless served at trial, when it is to be filed with the trial Judge.

It shall set forth the reason why the exhibit was not theretofore identified. No exhibit may be offered at trial unless identified in a pre-trial memorandum.

4. (b) Not applicable.

4. (c) The parties agree that the following documents which are not preceded by a letter of the alphabet and which were marked for identification, or which are otherwise identified in the order are authentic and may be received in evidence (each party reserves the right to object to any document preceded by the letter "A" on all grounds other than authenticity and to any document preceded by the letter "B" on all grounds including authenticity):

1) Defendant's Exhibit 12—letter signed by plaintiff and defendant December 17, 1964.

2) Defendant's Exhibit 15—letter—plaintiff to defendant, January 31, 1967 (offered solely as a communication of a claim).

3) Defendant's Exhibit 12(a)—letter from defendant to plaintiff without the handwritten insertion, dated December 17, 1964.

4) Defendant's Exhibit 24, 24A, 24B—letter—plaintiff to defendant dated March 16, 1965 and enclosures.

5) Defendant's Exhibit 30—letter—defendant to plaintiff dated December 28, 1964.

6) A. Defendant's Exhibit 31—Telegram to plaintiff—October 30, 1965.

7) A. Defendant's Exhibit 32—letter—defendant to plaintiff dated July 16, 1965 and enclosure.

8) Defendant's Exhibit G-13—letter defendant to Ferdinand Galic dated November 25, 1964.

9) Plaintiff's Exhibit 1A—letter—defendant to Libyan Government dated July 29, 1965.

10) Plaintiff's Exhibit 2—letter—defendant to Libyan Government dated December 30, 1965.

11) Plaintiff's Exhibit 3—letter—defendant to Libya dated December 27, 1965.

12) Plaintiff's Exhibit 4—document—dated September 18, 1964—defendant and Galic.

13) Plaintiff's Exhibit 6—document—dated September 18, 1964—defendant and de Rovin.

14) Plaintiff's Exhibit 7—document—dated September 18, 1964—Ogbi and defendant.

15) Plaintiff's Exhibit 8—document—Ogbi, Occidental and defendant dated June 19, 1965.

16) Plaintiff's Exhibit 9—letter—Chase Bank to Kabazi dated July 15, 1965.

17) Plaintiff's Exhibit 10—Petroleum Weekly, p. 6 dated August 9, 1965.

18) Plaintiff's Exhibit 15—Cable—Galic to defendant dated July 27, 1965 (offered as communication only).

19) A. Plaintiff's Exhibit 20—letter—defendant to Frottier—dated November 25, 1964.

20) A. Plaintiff's Exhibit 36—agreement—defendant and Ogbi—February 15, 1965.

21) A. Plaintiff's Exhibit 39—agreement—defendant and Ogbi—July 26, 1965.

22) A. Plaintiff's Exhibit 49—Cable—defendant to Galic—December 14, 1964.

23) Plaintiff's Exhibit 63—letter—defendant to Hammer—July 29, 1965 (offered as a communication only).

24) Plaintiff's Exhibit 72—letter—plaintiff to defendant dated January 31, 1967 (offered as a communication only).

25) Plaintiff's Exhibit 74—application to Libyan Government—dated July 29, 1965.

26) Plaintiff's Exhibit 79—letter Galic to defendant, August 2, 1965 (offered as a communication only).

27) Defendant's Exhibit 13—letter from defendant to plaintiff dated July 16, 1965 (offered as proof of a communication only).

28) Letter from defendant to Libyan Minister of Petroleum Affairs dated March 17, 1966 and enclosures (other than the Arabic notations and the Arabic enclosures).

29) Letter in English from defendant to Libyan Minister of Petroleum Affairs dated March 12, 1966.

30) Letter from Minister of Petroleum Affairs to the representative of defendant in Tripoli dated March 8, 1966 (offered only as proof of a communication).

31) Defendant's Exhibit 22—letter from Ferdinand Galic to Charles Allen dated 8/29/66.

32) Defendant's Exhibits 29 and 29A, copy of letter from plaintiff to defendant dated December 24, 1964 and document annexed thereto.

33) Defendant's Exhibit 33 for identification—letter from plaintiff dated February 11, 1967, if offered solely as proof of a communication.

34) Defendant's Exhibit 33A for identification, letter from defendant to plaintiff dated July 16, 1965, if offered solely as proof of a communication.

35. A. Defendant's Exh. 2—Letter—Galic to Charles Allen, December 2, 1964.

36. A. Defendant's Exh. 3—Letter—Herbert Allen to Galic, September 8, 1964.

37. A. Defendant's Exh. 4—Letter—Galic to Charles Allen, August 29, 1964.

38. A. Defendant's Exh. 5—Letter—Galic to Charles Allen, September 7, 1964.

39. A. Defendant's Exh. 8—Letter—Galic to Herbert Allen, October 13, 1965.

40. B. Defendant's Exh. 8A—Memo—Charles Allen and Herbert Allen, October 18, 1965.

41. B. Defendant's Exh. 9—Letter—Kabazi to Galic, February 16, 1966.

42. A. Defendant's Exh. 11—Cable—Galic to Charles Allen, June 25, 1966 and letter Charles Allen to Hammer, July 5, 1966.

43. A. Defendant's Exh. 14—Memo of Charles Allen, June 11, 1967.

44. A. Defendant's Exh. 16—Letter, Herbert Allen to Hammer, December 9, 1964.

45. A. Defendant's Exh. 17—Letter—Hammer to Herbert Allen, December 17, 1964.

46. A. Defendant's Exh. 21—Letter—Galic to Charles Allen, August 28, 1964.

47. A. Defendant's Exh. 26—Letter, Herbert Allen to Hammer, September 1, 1964.

48. A. Defendant's Exh. 27—Letter—Hammer to Herbert Allen, September 5, 1964.

49. A. Defendant's Exh. 28—Letter—Herbert Allen to Hammer, September 8, 1964.

50. A. Defendant's Exh. 34—Letter—Galic to Charles Allen, January 22, 1965.

Pre-Trial Order

51. A. Defendant's Exh. 34A—Letter—Galic to Hammer January 22, 1965.

52. A. Defendant's Exh. K-3—Sunday Ghibli, August 8, 1965.

53. A. Defendant's Exh. G-3—Letter, Galic to Hammer, March 8, 1965.

54. B. Defendant's Exh. G-6A—Bank Transfer, March 11, 1965.

55. B. Defendant's Exh. G-7—Bank Transfer, October 5, 1964.

56. B. Defendant's Exh. G-8—Bank Transfer, March 11, 1965.

57. B. Defendant's Exh. G-9—Letter, Galic to Union Banque, March 8, 1965.

58. A. Defendant's Exh. G-10—Letter, Galic to Hammer October 1, 1964.

59. B. Defendant's Exh. G-11—Letter, Galic to Union Banque, October 5, 1964.

60. A. Defendant's Exh. G-15—Letter, Galic to Vaughan March 8, 1965.

61. A. Plaintiff's Exh. K-1—Book entitled "Money, Money, Money".

62. B. Plaintiff's Exh. K-2—Letter—Kabazi to Galic, February 16, 1966.

63. B. Plaintiff's Exh. G-3—Draft, September 22, 1964.

64. A. Plaintiff's Exh. G-4—Check—Galic to Ogbi, September 17, 1964.

65. B. Plaintiff's Exh. G-5—Letter—Galic to Union Suisse, October 5, 1964.

Pre-Trial Order

66. A. Plaintiff's Exhibit G-7—Letter—Ogbi to Galic, September 28, 1964.

67. B. Plaintiff's Exh. G-8—Letter—Galic to Ogbi, October 19, 1964.

68. A. Plaintiff's Exh. G-9—Letter—Ogbi to Galic, November 6, 1964.

69. A. Plaintiff's Exh. G-10—Letter—Ogbi to Galic, November 28, 1964.

70. A. Plaintiff's Exh. G-11—Vaughan to Galic, Letter March 5, 1965.

71. A. Plaintiff's Exh. G-15- Galic to Ogbi March 30, 1965.

72. A. Plaintiff's Exh. G-16—Letter—Ogbi to Galic April 2, 1965.

73. A. Plaintiff's Exh. G-28—Cable from Galic, May 23, 1967.

74. B. Plaintiff's Exh. G-29—Letter—Galic to Charles Allen, May 31, 1967

75. A. Plaintiff's Exh. G-20—Letter—Galic to Hammer, August 2, 1965.

76. A. Plaintiff's Exh. G-22—Letter—Royall, Koegel to Occidental, March 15, 1966.

77. A. Plaintiff's Exh. G-23—Check—Hammer to Galic, August 26, 1966.

78. B. Plaintiff's Exh. G-24—Charles Allen to Galic, December 2, 1966.

79. B. Plaintiff's Exh. G-25—Letter—Galic to Charles Allen, December 6, 1966.

80. B. Plaintiff's Exh. G-26—Letter—Galic to Charles Allen (enclosure), January 12, 1967.

81. B. Plaintiff's Exh. G-27—Letter—Galic to Charles Allen (enclosures) May 22, 1967.

82. A. Plaintiff's Exh. 12—Letter—Galic to Hammer, January 22, 1965.

83. A. Plaintiff's Exh. 13—Letter—Galic to Hammer, January 21, 1965.

84. A. Plaintiff's Exh. 14—Letter—Galic to Hammer, March 8, 1965.

85. A. Plaintiff's Exh. 18—Letter—Hammer to Charles Allen, April 5, 1967.

86. A. Plaintiff's Exh. 19—Letter—Charles Allen to Hammer, April 11, 1967.

87. A. Plaintiff's Exh. 31—Memo signed by Ogbi, September 4, 1965.

88. A. Plaintiff's Exh. 33—Check—Hammer to Galic, September 18, 1964

89. A. Plaintiff's Exh. 34—Note signed by Ogbi

90. A. Plaintiff's Exh. 35—Galic to Occidental (cable), June 25, 1966.

91. A. Plaintiff's Exh. 42—Letter—Blom to Ogbi, April 23, 1965.

92. A. Plaintiff's Exh. 43—Letter—Ogbi to Blom (encl.), April 5, 1965.

93. A. Plaintiff's Exh. 44—Letter—Blom to Ogbi, March 25, 1965.

94. A. Plaintiff's Exh. 45—Letter—Galic to Hammer, August 26, 1966.

95. A. Plaintiff's Exh. 46—Release by Galic, August 26, 1966.

96. A. Plaintiff's Exh. 52—Letter—Hammer to Dunlap, August 10, 1964.

97. A. Plaintiff's Exh. 53—Letter—Brenner to Ogbi, August 17, 1964.

98. A. Plaintiff's Exh. 54—Letter—Ogbi to Brenner, August 19, 1964.

99. A. Plaintiff's Exh. 55—Letter—de Rovin to Brenner, September 12, 1964.

100. A. Plaintiff's Exh. 56—Letter—Ogbi to Occidental, August 14, 1964.

101. A. Plaintiff's Exh. 57—Letter—Ogbi to Brenner, August 14, 1964.

102. A. Plaintiff's Exh. 64—Letter—Galic to Hammer (enclosure) March 8, 1965.

103. A. Plaintiff's Exh. 65—Letter—Galic to Hammer, October 1, 1964.

104. A. Plaintiff's Exh. 68—Herbert Allen to Hammer, September 1, 1964.

105. A. Plaintiff's Exh. 69—Herbert Allen to Hammer, September 8, 1964.

106. A. Plaintiff's Exh. 70—Letter—Herbert Allen to Hammer, December 9, 1964.

107. A. Plaintiff's Exh. 73—Vaughan report

108. B. Plaintiff's Exh. A-1—Agreement re "On the Crest of the Dune", July 31, 1965.

109. B. Plaintiff's Exh. A-2—Bank deposit, August 5, 1965.

110. B. Plaintiff's Exh. A-3—Receipts for money, December 18, 1965.

111. B. Plaintiff's Exh. A-4—Newspaper, August 5, 1965

112. B. Plaintiff's Exh. A-5—Bank statement, August 21, 1965.

113. B. Plaintiff's Exh. A-6—Cable—Kabazi to Arata, February 26, 1966.

114. B. Plaintiff's Exh. A-7—Cable, Kabazi to Mancini, June 9, 1966.

115. B. Plaintiff's Exh. A-8—Cable—Kabazi to Arata (?)

116. B. Plaintiff's Exh. A-9—Letter—Kabazi to Arata, October 22, 1965.

117. B. Plaintiff's Exh. A-10—Letter—Kabazi to Arata, March 18, 1966.

118. B. Plaintiff's Exh. A-11—Letter—Galic to Arata, April 7, 1966.

119. B. Plaintiff's Exh. A-12—Letter—Galic to Arata, May 24, 1966.

120. B. Plaintiff's Exh. A-13—Letter—Galic to Arata, June 7, 1966.

121. B. Plaintiff's Exh. A-14—Letter—Kabazi to Arata, December 1965

122. B. Plaintiff's Exh. A-15—Letter—Kabazi to Arata, December 5, 1965.

123. B. Plaintiff's Exh. A-16—Letter—Kabazi to Arata, January 19, 1966.

124. B. Plaintiff's Exh. A-17—Letter—Kabazi to Arata, February 3, 1966.

125. B. Plaintiff's Exh. A-18—Letter—Kabazi to Arata, March 19, 1966.

126. B. Plaintiff's Exh. A-19—Cable—Kabazi to Arata, March 22, 1966.

127. B. Plaintiff's Exh. A-20—Letter—Kabazi to Arata, March 30, 1966.

128. B. Plaintiff's Exh. A-25—Letter—Galic to Arata, October 9, 1965.

129. B. Plaintiff's Exh. A-26—Letter—Scala to Arata, December 2, 1965.

130. B. Plaintiff's Exh. A-27—Letter—Kabazi to Arata, May 24, 1965.

131. B. Plaintiff's Exh. A-28—Letter—Kabazi to Arata, March 10, 1966.

132. B. Plaintiff's Exh. A-29—Film, "Crest of the Dune"

133. B. Plaintiff's Exh. A-30—Newspaper Article, October 12, 1965.

134. B.—Copy of bill of Hotel Uaddan to Galic, February 19th and 20th, 1966.

135. B.—Invoice for airplane ticket to Libya, February 19, 1966, attached to Galic's deposition.

136. B.—Receipt dated October 28, 1965, Galic to Arata.

137. B.—Receipt dated August 11, 1965, Galic to Arata.

138. A.—Letter—Vaughan to Lawler, April 7, 1965.

139. A.—Letter—Lawler to Vaughan, April 12, 1965.

140. A.—Cablegram, Hammer to Lawler, June 13, 1965.

141. A.—Letter, Blom to Lawler, August 10, 1965.

142. A.—Letter, Blom to Lawler, September 1, 1965.

143. A.—Letter, Lawler to Blom, September 6, 1965.

144. A.—Letter, Hammer to the Prime Minister of Libya, July 16, 1963 and enclosure.

145. A.—Letter, Grey to Lawler, December 16, 1963.

146. A.—Letter, Lawler to Grey, February 22, 1964.

147. A.—Letter, Grey to Lawler, February 26, 1964.

148. A.—Letter, Lawler to Hammer, October 23, 1964.

149. A.—Letter, Vaughan to Lawler, October 27, 1964.

150. A.—Letter, Lawler to Hammer, November 2, 1964.

150. A.—Letter, Lawler to Vaughan, November 2, 1964.

152. A.—Letter, Vaughan to Lawler, November 10, 1964.

153. A.—Letter, Lawler to Hammer, January 8, 1965.

154. A.—Cable, Vaughan to Lawler, March 26, 1965.

155. A.—Letter, Lawler to Vaughan, March 29, 1965.

156. A.—Letter, Lawler to Vaughan, April 12, 1965.

157. A.—Letter, Lawler to Hammer, April 22, 1965.

158. A.—Letter, Vaughan to Lawler, April 30, 1965.

159. A.—Certificate, dated July 24, 1969.

160. A.—Haring report, dated October 14, 1970.

161. A.—Defendant's Exhibit 1, Item 4 thereof, memo of dates.

162. A.—Defendant's Exh. 18, underwriters' questionnaire, May 11, 1966.

163. A.—Defendant's Exh. 19, list of officers of Allen & Co., Inc.

164. A.—Defendant's Exh. 20, list of directors of Allen & Co., Inc.

165. A.—Defendant's Exh. 35, prospectus dated June 17, 1966.

166. A.—Defendant's Exh. 36, pages of Wall Street Journal of January 31, April 7, and June 1, 1967.

167. A.—Defendant's Exh. 37, page of New York Post of January 18, 1967.

168. A.—Defendant's Exh. 38, list of stockholders of Allen & Co., Inc.

169. A.—Defendant's Exh. 39, in part, Art. III, §1 and Art. IV §§ . 5 of by-laws of Allen & Co., Inc.

170. A.—Defendant's Exh. 41, financial statements of plaintiff.

171. B.—Defendant's Exh. K-1, photograph

172. B.—Defendant's Exh. K-2, photograph

173. B.—Defendant's Exh. K-4, photograph

174. B.—Defendant's Exh. K-5, photograph

175. B.—Defendant's Exh. K-6, photograph.

176. A.—Defendant's Exh. K-8, document entitled "Libyan Petroleum Law".

177. A.—Defendant's Exh. K-9, document entitled "Libyan Petroleum Law", August 1, 1965

178. A.—Letter, dated March 20, Galic (?) to de Rovin.

179. A.—Letter dated August 8, Galic (?) to de Rovin.

180. A.—Letter dated June 8, Galic (?) to de Rovin.

181. A.—Letter dated July 10, Galic (?) to de Rovin.

182. A.—Letter dated July 13 (?), Galic (?) to de Rovin.

183. A.—Letter dated September 18, Galic (?) to de Rovin.

184. A.—Letter dated September 20, Galic (?) to de Rovin.

185. A.—Letter dated October 8, Galic (?) to de Rovin.

186. A.—Letter dated December 3, Galic (?) to de Rovin.

187. A.—Letter dated November 29, Galic (?) to de Rovin.

188. A.—Letter dated June 2, Galic (?) to de Rovin.

189. A.—Letter dated April 7, Galic (?) to de Rovin.

190. B.—Pages 16-17 of prospectus dated February 20, 1962.

191. B.—Pages 10-13 of prospectus of Continental Telephone Co.

192. A.—Letter, plaintiff to defendant, August 2, 1966.

193. A.—Letter, defendant to Katz, Zuckerman, August 12, 1966.

194.—Defendant's Exhibit G-14—letter Herbert Allen to Galic, dated January 4, 1965 and enclosure.

195. B.—Defendant's Exhibit G-17, document supposedly between de Rovin and Galic dated September 22, 1964.

196. A.—Defendant's Exhibit G-25—letter Galic to de Rovin dated April 21.

197. A.—Defendant's Exhibit G-31—letter Galic to de Rovin—January 13, 1965.

198. A.—Defendant's Exhibit G-33—Cable—Galic to de Rovin—January 4, 1965.

199. B.—Defendant's Exhibit G-42—letter (with handwritten changes) Galic (?) to de Rovin dated March 19, 1965.

200. A.—Defendant's Exhibit G-46—(only par. 3d)—letter Galic to de Rovin—April 7.

201. A.—Defendant's Exhibit G-48 (first paragraph and first sentence of second paragraph only)—letter Galic to de Rovin—February 22.

202. A.—Defendant's Exhibit G-49 (paragraphs first and fourth only)—letter Galic to de Rovin dated March 15.

203.—Plaintiff's Exhibit 66—letter Occidental of Libya, Inc. to Minister of Petroleum Affairs Kabazi dated February 25, 1966, together with postal receipt.

204.—Plaintiff's Exhibit 71—letter Herbert Allen to Dr. Hammer dated December 24, 1964.

205.—Plaintiff's Exhibit 74A—Part of Bid Application for Concessions entitled "Agricultural Proposal For the United Kingdom of Libya (Fertilizer & Kufra Oasis Project)".

206. A.—Plaintiff's Exhibit 76—Preferences for Concessions.

207. B.—Concession Contract.

208. B.—Concession Contract.

5. The parties agree that the witnesses whom each party now intends to call, along with the specialty of experts to be called, are those listed in the memoranda heretofore filed pursuant to local Calendar Rule 13(b) III(h). Should any party hereafter decide to call any additional witnesses, prompt notice of their identity shall be given to each other party and to the Court by serving and filing a supplemental pre-trial memorandum. The supplemental pre-trial memorandum may be in a short form statement filed with the deputy clerk for calendars unless served at trial, when it is to be filed with the trial Judge. It shall set forth the reason why the witness was not theretofore identified. No witness may be called at trial unless identified in a pre-trial memorandum.

6. The parties agreed to limit the number of expert witnesses as follows:

Of the witnesses listed in the parties' pre-trial memoranda, plaintiff agrees to call no more than two expert witnesses on any one issue and defendant agrees to call no more than four expert witnesses on any one issue.

Pre-Trial Order

7. The following are all of the claims for damages or for other relief asserted by the plaintiff in this action, as of the date of this conference: for an accounting or for damages for breach of contract in the sum of $100,000,000, together with such further damages as may have accrued since the date of the service of the complaint herein.

8. The parties also agreed on the following matters:

a) The trial of this action is limited in the first instance to the issue of liability and the issues relating to any accounting or to damages are to await the trial on the issue of liability.

b) The plaintiff expects that it will require ten days of trial for its case and the defendant expects that it will also require ten days for its defense.

9. Plaintiff contends that the issues to be tried as framed by the pleadings are those set forth in subdivision A, *infra*, while defendant contends that such issues are as set forth in subdivision B, *infra*. Neither party concedes that the triable issues are as contended by the other party.

A.

1) Was the plaintiff offered the opportunity by Ferdinand Galic to acquire or participate in the acquisition of oil and gas concessions in the Kingdom of Libya?

2) Did the plaintiff apprise the said defendant of the said opportunity and did the defendant indicate to the plaintiff that the plaintiff would have the right to participate in all projects undertaken by defendant in the Kingdom of Libya?

3) Did the plaintiff introduce Ferdinand Galic to the defendant in order that the parties might utilize Galic's intervention services in relation to the obtaining of oil and gas concessions in the Kingdom of Libya?

4) Did the parties enter into an agreement pursuant to which the parties, through a joint venture or otherwise, were to acquire, develop, explore and exploit oil and gas concessions in the Kingdom of Libya?

5) Did Ferdinand Galic turn up two oil concessions of the Kingdom of Libya or alternatively did the defendant interfere with or prevent Ferdinand Galic from turning up such concessions?

6) Is the defendant estopped from asserting that Ferdinand Galic did not turn up the said two concessions?

7) Did the defendant waive the condition of the joint venture agreement that Ferdinand Galic turn up the concessions?

8) Did the defendant compensate Ferdinand Galic for the services performed by Ferdinand Galic with respect to the concessions?

9) Did the defendant exclude the plaintiff from all interest in and to the said concessions and in and to the oil wells, oil reserves and oil produced or to be produced therefrom and has the defendant excluded the plaintiff from all profits and benefits derived and to be derived therefrom?

10) Did the plaintiff demand an accounting with respect to the venture from the defendant and did the defendant refuse to so account?

B.

1) Whether Exhibit "A" annexed to the complaint created a valid and enforceable joint venture agreement between the parties?

2) If so, whether defendant had the right to terminate Exhibit "A" without liability on July 16, 1965, which was prior to the submission of sealed bids by defendant for oil concessions in Libya?

3) If not, whether plaintiff acquiesced in defendant's termination by its subsequent conduct and silence?

4) If not, whether plaintiff, directly or indirectly, assisted one of defendant's competitors in acquiring a concession in Libya in which defendant was likewise interested?

5) If so, whether such assistance rendered without the knowledge or consent of defendant constitutes a complete defense to plaintiff's claim against defendant under Exhibit "A" to its complaint?

6) If not, whether defendant had acquired the two concessions in Libya as the result of the intervention and efforts of Ferdinand Galic, rather than through any efforts of its own?

7) If so, whether Ferdinand Galic had acquired said concessions for defendant through the use of illegal, unlawful and improper means?

8) If so, whether such conduct renders Exhibit "A" illegal and unenforceable by plaintiff in this action?

9) If not, whether plaintiff is estopped from asserting any claim against defendant with regard to the Libyan oil concessions by reason of its prior disclaimer to the Securities and Exchange Commission and to the general public in connection with defendant's public issue involving approximately $62,000,000 of debentures?

10) If not, whether plaintiff has been guilty of laches and unclean hands sufficient to bar it from maintaining the instant action in a court of equity?

11) If not, whether this Court is jurisdictionally empowered to grant plaintiff an assignment equal to a twenty-five (25) percent interest in defendant's Libyan oil concessions, notwithstanding Libyan Statutory law to the contrary?

Dated: New York, New York
1971.

So Ordered

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U. S. D. J.

Consented to:

SAMUEL N. GREENSPOON
and
POLLACK & SINGER
By Daniel A. Pollack
A Member of Said Firm
Attorneys for Plaintiff

Opinion as Amended.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Eaton, Van Winkle & Greenspoon, Esqs., 600 Third Avenue, New York, New York 10016, Attorneys for Plaintiff; John Van Voorhis, Esq., Samuel N. Greenspoon, Esq., Daniel A. Pollack, Esq., Paul Z. Lewis, Esq., Of Counsel.

Phillips, Nizer, Benjamin, Krim & Ballon, Esqs., 40 West 87th Street, New York, New York 10019, Attorneys for Defendant; Louis Nizer, Esq., Neil A. Pollio, Esq., George Berger, Esq., Mitchell, Silberberg & Knupp, Esqs., Los Angeles, California, Arthur Groman, Esq., of Counsel.

EDWARD WEINFELD, D. J.:

Plaintiff is a limited partnership which is and has been engaged in the business of investment banking; its managing partners are Charles Allen, Jr. and Herbert Allen, Sr., brothers. The defendant is a corporation engaged in promoting various projects including the acquisition and exploitation of oil concessions; its principal executive officer is Dr. Armand Hammer.

Plaintiff seeks to recover in excess of one hundred million dollars upon a claim of breach of a joint venture with defendant to acquire and exploit oil concessions in the Kingdom of Libya, or for an accounting of profits. The defendant denies the existence of a valid and enforceable agreement, contending that the arrangement of the parties was an agreement to agree in the future which never ripened into a binding arrangement and that if an agreement was in effect, a material term was not performed; in addition, it sets up various defenses, in-

cluding termination of the alleged agreement by consent and acquiescence, laches, and estoppel.

The litigation has been somewhat protracted from its start. The pretrial proceedings, including the oral depositions of the parties and witnesses, interrogatories and answers thereto, documents produced under discovery, requests for admissions and other pre-trial activities produced in advance of trial a record of thousands of pages. The trial itself took twenty-one trial days, with a transcript of testimony totaling over 3,000 pages[1] and with several hundred exhibits in evidence. Since the trial was to the court, some testimony and a number of exhibits, which upon their face include hearsay matter and self-serving declarations, were received with the observation that the court's determination of the issues would be uninfluenced thereby and that only proper evidence would be considered.[2]

Despite the very voluminous record, the issues to be decided are comparatively simple—at least so they appear to this court—although the parties relentlessly pursued many matters which are of minimal consequences to what the court finds are the three basic issues:[3] (1) was there a valid and enforceable contract of joint venture between the parties; (2) if so, did Ferdinand

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[1]Referred to hereafter as Trial Record, T.R.

[2]*Reid v. Quebec Paper Sales & Transportation Co.*, 340 F. 2d 34, 38 (2d Cir. 1965); *United States v. 396 Corp.*, 264 F. 2d 704, 709 (2d Cir.), *cert. denied*, 361 U. S. 817 (1959); *United States v. 1,291.83 Acres of Land*, 411 F. 2d 1081, 1086 (6th Cir. 1969); *New York Life Ins. Co. v. Harrington*, 299 F. 2d 803, 806 (9th Cir. 1962); *Commonwealth Edison Co. v. Allis-Chalmers Co.*, 40 F.R.D. 96, 101 (N.D. Ill. 1966); 9 C. Wright & A. Miller, Federal Practice and Procedure, §2412 (1971). See also T.R., pages 92, 427, 465, 2973, 2979.

[3]E. g., T.R., 422, 456, 2803, 2978; also PASSIM.

Galic,[4] as the amended complaint alleges, "turn up" the concessions granted by the Libyan government to the defendant, which are the subject of plaintiff's claim; and (3) assuming a valid agreement, was it terminated with plaintiff's consent and acquiescence. As to the first two, the plaintiff has the burden of proof;[5] as to the third, the burden of persuasion is upon the defendant. Thus, even if plaintiff establishes the existence of an agreement as alleged, in the event it was terminated with plaintiff's acquiescence there would be no basis for recovery. So, too, if the defendant sustains its defense of estoppel or laches plaintiff would be barred from a recovery.

THE ALLEGED AGREEMENT OF JOINT VENTURE

Early in 1964, in Paris, France, a "General" deRovin advised one Ferdinand Galic that he had powerful contacts in Libya to obtain oil concessions there. Galic, a long-time friend of the Allens, conveyed this information to them and portrayed deRovin as a man of great influence in Libya. Herbert Allen in turn communicated with Dr. Armand Hammer, advising they had a friend, Galic, who, with associates, could deliver oil concessions in Libya where Occidental was interested in acquiring concessions, having previously submitted proposals therefor. Thereafter, in September 1964, at London, England, Herbert Allen, Sr., Armand Hamer, "General" deRovin, Ferdinand Garlic and one Taher Ogbi, a Libyan

[4]In various documents in evidence, Galic's name is spelled "Galic" and "Gallic." However, by the time of trial, the parties appear to have settled on the form of spelling which appears throughout this opinion.

[5]See *Bowen v. Horgan*, 259 N. Y. 267, 269 (1932); *Uni-Serv Corp. v. Fredo*, 279 N. Y. S. 2d 510, 53 Misc. 2d 644 (App. T. 1967); *Runno v. Smith*, 159 N. Y. S. 2d 859, 861, 5 Misc. 2d 366 (Sup. Ct. 1957); *Modica v. Battista*, 339 N. Y. S. 2d 599, 602, 72 Misc. 2d 763 (Dist. Ct. 1972).

who also was represented to be influential in Libyan affairs, met at different meetings over a 2-day period. The result was twofold: (1) the defendant confirmed in writing on September 18, 1964 separate arrangements it had made with Galic, "General" deRovin and Ogbi to render services relating to Occidental obtaining oil concessions in Libya; (2) Herbert Allen, Sr. and Hammer had discussions upon which plaintiff bases its claim that an agreement was reached to form a joint venture to acquire and exploit oil concessions in the Kingdom of Libya. No writing was then signed; plaintiff alleges the agreement was sealed by a handshake between Allen and Hammer; that its terms provided, as the amended complaint alleges, the parties would share all concessions "turned up" by Galic on the basis of a 25% interest to plaintiff and 75% interest to defendant with profits and costs to be shared in the same proportion. The defendant denies that such an agreement was reached. The complaint further alleges that on December 17, 1964 a memorandum was signed in relation to their agreement. This refers to a letter bearing that date sent by Hammer to Herbert Allen which states in part:

> "Confirming our recent conversation regarding possible concessions in Libya, we agree to the same arrangements with you on the possible second concessions as on the first concessions, namely, Occidental will share on the basis of 75% for us and 25% for you on anything Ferdinand Gallic turns up. This includes sharing costs and profits."

Herbert Allen, after consultation with an attorney for plaintiff, made a handwritten change in the above letter by the intersection of the phrase "to be mutually agreed upon" following the words "costs." Allen then initialed and returned it to Hammer with a letter dated December 24, 1964, and where he stated:

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> "I am returning herewith your letter of December 17th in duplicate with just one major change and that is, that the cost should be 'to be mutually agreed upon', and I have initialed same.
>
> * * *"

The change made by Herbert Allen was accepted, and initialed by Hammer who returned the letter to plaintiff on December 28, 1964.

The foregoing recital of facts is not in dispute; also, it is not disputed that the "first concessions" referred to in the letter of December 17 are the two concessions bid for and eventually granted to defendant that are the subject of this lawsuit. Plaintiff contends that the December 17 letter with its handwritten insertion of the words "to be mutually agreed upon" merely memorialized certain provisions of the September 16, 1964 agreement concluded at London, England. In summary, it is contended that Herbert Allen for plaintiff and Armand Hammer for defendant then and there orally entered into an agreement for the acquisition and development of oil concessions in Libya, the specific terms of which were: (1) the plaintiff and defendant were co-ventures with respect to areas numbered 32 and 59,[6] on the basis of a 25% interest to plaintiff and a 75% interest to defendant; (2) plaintiff would contribute, upon being billed by defendant, 25% of the costs thereof and defendant would contribute 25% of such costs, (3) profits and losses would be shared 25% by plaintiff and 75% by defendant; (4) defendant would manage the venture and handle all necessary details and would bill plaintiff for its share of the costs; and (5) that either in September 1964 or sometime afterwards but prior to December 17, 1964

[6]Defendant was awarded the concessions for Blocks 42B and 44 which were carved out of Released Area 59 which had been mentioned at the London meetings.

the foregoing agreement was amended so as to provide that the costs should be mutually authorized.[7]

Defendant, on the other hand, denies that a joint venture agreement was reached in London or thereafter or that the parties even discussed at London that defendant would be managing partner of such a venture. Hammer's version is that Allen stated that Allen & Company wanted to participate to the extent of 25%, which was acceptable to him provided the concessions were obtained by Galic, further, that Allen & Company would make an investment proportionate to its percentage, but Allen said his firm was not ready to make a heavy risk investment unless the amount was mutually agreed upon in advance; that Allen "wanted freedom of action of deciding if they wanted to put up their money or if they didn't want to put up their money at any stage,"[8] which also was agreeable to Hammer. The defendant further contends, and in support of his position points to Charles Allen's testimony at the trial,[9] that the December 17 letter contains their total arrangements regarding the Libyan oil concessions. The defendant's further position is that even accepting plaintiff's contention that an agreement was reached in September, later memorialized in December 1964, that it simply reflected an agreement to agree in the future since the costs of the project, a vital term, remained subject to mutual agreement.

It may readily be acknowledged that New York law[10] on the issue is not sharply defined so that there may be certitude of judgment. It is clear, however, that the

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[7]Plaintiff's Proposed Findings 32, 33.

[8]T.R., 804-05.

[9]A position disavowed by his own counsel. See "Plaintiff's Contentions as to the Contract Between the Parties" pages 7-8.

[10]The parties agree that since jurisdiction is based upon diversity of citizenship, the substantive law of New York applies.

court's inquiry does not "come to a full stop as soon as the phrase 'to be mutually agreed upon' is encountered."[11] This court is of the view that the New York courts would find the answers to two questions decisive as to whether the parties here entered into an enforceable contract: (1) Did the parties intend to enter into a binding contractual relationship, even though a material term was "to be mutually agreed upon" in the future, or did the parties intend the "contract" to be binding only if they did thereafter in fact arrive at a mutually satisfactory agreement as to the term?[12] If the answer to the first part of the question is no and the second part yes, the agreement is incomplete and unenforceable; if the answers are the reverse, there may be an enforceable contract depending on the answer to the second or following question. (2) Assuming the parties intended to enter into a binding contractual relationship, are there sufficiently objective criteria whereby a court can determine—in effect, fill in—the blank or open terms?[13] Here, the questions are close and the cases cited by the respective parties offer no solution; the instant case must be decided upon its own facts.

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[11]*May Metropolitan Corp. v. May Oil Burner Corp.*, 290 N. Y. 260, 265, 49 N. E. 2d 13 (1943).

[12]See *May Metropolitan Corp. v. May Oil Burner Corp.*, 290 N. Y. 260, 264, 49 N. E. 2d 13 (1943); *Mayer v. McCreary*, 119 N. Y. 434, 23 N. E. 1045 (1830); *Bark Inn Hotel, Inc., v. Messing*, 224 N. Y. S. 2d 179 (Sup. Ct. 1962). See also *Anserge v. Kane*, 244 N. Y. 395, 155 N. E. 683 (1927); *St. Regis Paper Co. v. Hubbs & Hastings Paper Co.*, 235 N. Y. 30, 36, 138 N. E. 495 (1923).

[13]See *May Metropolitan Corp. v. May Oil Burner Corp.*, 290 N. Y. 260, 265-66, 49 N. E. 2d 13 (1943); *Metro-Goldwyn-Mayer, Inc., v. Scheider*, 75 Misc. 2d 418, 347 N. Y. S. 2d 755, 761 (1972), modified on other grounds, 352 N. Y. S. 2d 205 (App. Div. 1974); cf. N.Y. U.C.C. §§ 2-204(3), 2-305(1)(b) (McKinney, 1964).

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Turning to the first question, it is apparent, if the parties reached an understanding, whether in September or December 1964, that an item of importance was left open and subject to future mutual agreement—the costs to be incurred in pursuit of the venture. These could include the preliminary expenses for the acquisition of the concessions, and once acquired, the additional expenses of their exploitation. Passing for the moment the cost of the acquisition, the expense of exploitation could run into the many millions of dollars and end up as a "dry hole"—a complete loss of capital, one of substance and consequence, even to those of great wealth. In fact, as the parties knew, two leading American oil companies each had expanded fifty million dollars exploring concessions in Libya without getting a single barrel of oil; a French oil company had a similar experience to the extent of twenty-five million dollars. The Allens acknowledged they were aware that hundreds of millions could be sunk into the ground in a vain search for oil. Thus, substance is given to Hammer's testimony that Herbert Allen, both in his discussion at the London meeting in September 1964 and again in December 1964 by his handwritten insertion of the phrase "to be mutua'ly agreed upon," described by Allen himself as a "major change," was the cautious financial investor who sought to protect plaintiff against the risk of extremely heavy commitments with respect to the Libyan oil concessions without its prior approval and consent. I accept Hammer's testimony that at the London meeting, the discussions relative to a 25% participation by Allen a Company reflected plaintiff's purpose to have "the freedom of action of deciding if they wanted to put up their money or didn't want to put up their money at any stage"[14]—that plaintiff sought and obtained such "freedom of action," thereby leaving open for future agreement an essential term of the proposed relationship.

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[14]T.R., pages 804-05.

With "costs to be mutually agreed upon," was the defendant free to make vast expenditures of risk capital and was plaintiff to pay 25% upon being billed, or were the expenditures subject to plaintiff's prior agreement or veto? Whether conceived by Herbert Allen alone or with the advice of his counsel, the court is convinced that, upon the facts of this case, the phrase "to be mutually agreed upon" was intended by plaintiff as an escape clause whereby it would not be bound to the proposed venture unless and until it approved any costs incurred. The evidence supports a finding that the parties did not intend to enter into a binding contractual relationship absent mutual agreement upon the costs for the acquisition and exploitation of the project.

Second, even assuming that the parties intended to be bound by their arrangement, costs, an essential term thereof, upon which the parties never reached an agreement, is so indefinite that the contract is unenforceable. If the parties failed to "mutually agree" on costs to be charged against the venture, upon what basis could a court fill in that essential term?

What is the standard of reasonable costs or investment for the project which plaintiff claims was the subject of the joint venture agreement? Plaintiff argues that it "could no more have abandoned defendant, without paying its 25% share of the costs which were reasonably appropriate to the exploitation of the venture, than defendant could have exclude[d] plaintiff from the venture. . . ."[15] This rhetorical position must yield to the realities of the situation as the parties created them. Assume defendant had expended twenty million dollars for exploitation and billed plaintiff for its 25% share, but plaintiff refused to pay because the funds had been expended without its approval. Who decides, and upon what criteria, whether twenty million dollars was, to use

[15]Plaintiff's Post Trial Brief, page 21.

plaintiff's language, "reasonably appropriate to the exploitation of the venture"? And if after the expenditure of that substantial sum oil was nowhere in sight, was defendant thereafter free to probe further in the hope of striking oil and to incur additional substantial expenses with plaintiff committed to pay its 25%? This is not a situation where prior demonstrated experience in an industry can be drawn upon in deciding what costs are reasonable and may be reasonably incurred, despite initial failure in carrying out or exploiting the purpose of a joint venture, as was the case in *Lord v. Pathe News, Inc.*,[16] so heavily relied upon by plaintiff.

The exploitation of concessions involves astronomical costs which vary from project to project; unusual risk capital is required. Indeed, plaintiff's lawyer, who counseled it on the inserted clause, referred to the concessions as "at most a hunting license, maybe only just a lottery ticket."[17] It has not been suggested, and certainly no proof has been offered, that such amounts can be determined by industry practice, custom or usage of the trade.

Moreover, standards for determining what costs would be proper and reasonable in "turning up" the concessions are even less tangible. If the Galic group submitted a one million dollar expense bill for "turning up" concessions and one party refused to pay the agreed upon percentage of the sum, on what basis would a court determine what items on the bill were properly chargeable against the joint venture? What exactly does "turning up" an oil concession entail? Does it include hotel bills, entertainment expenses or gifts? Plaintiff has offered no evidence that would begin to answer these questions.

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[16] 97 F. 2d 508 (2d Cir. 1938).

[17] T.R., 2431.

The indefiniteness of the agreement is further emphasized by the testimony of plaintiff's counsel, who, upon consultation by Herbert Allen, either authorized or approved the phrase "to be mutually agreed upon." He testified that he understood the phrase to apply differently to the two phases of the proposed joint venture[18] —as to the acquisition of the concessions, consent of the plaintiff to costs was required; however, once acquired, the defendant had absolute discretion to expand whatever sum it deemed necessary in exploiting the concessions.[19] This testimony serves to underscore that the agreement alleged by plaintiff, the enforceability of which plaintiff has the burden of proving, in indefinite, incomplete and abounds in too many uncertainties as to what the parties agreed upon. The court finds that the parties did not enter into or reach a binding agreement; further that they left open vital matters as to costs for future agreement, as to which there are lacking definite objective criteria.

TERMINATION OF THE AGREEMENT

Assuming, contrary to the foregoing conclusion, that there was a valid joint venture agreement, as plaintiff contends, there remain the issues of whether the concessions were in fact "turned up" by Galic, and whether the

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[18]T.R., 2512, 2530-2531.

[19]It is not without interest that plaintiff disavows this portion of its attorney's testimony "since he was [not] a party to the agreement [nor] did [he] negotiate the words actually used, and was not the author of the words." Plaintiff's Post Trial Reply Brief, page 41. The evidence, however, does warrant the finding that the attorney was either the author of or approved the phrase, although he was vague as to whether he formulated the exact language. While the testimony of the attorney on this point does not, of course, bind the court as to the legal import of the language, it emphasizes the uncertainty which surrounds the use of the phrase.

agreement was terminated with plaintiff's consent or acquiescence. Since plaintiff, somewhat contrary to its pretrial and trial position,[20] now contends that its claimed agreement with defendant was effective immediately when, in the summer of 1964, Galic brought to the parties' attention the opportunity to obtain oil concessions, and it was not premised on further activity by Galic provided the concessions were granted, we defer consideration of Galic's performance and turn to the issue of termination.

The Galic-deRovin-Ogbi group may be considered a unit of which Galic was the leader. Each was engaged under agreements dated September 18, 1964 upon representations that he was influential with various Libyan officials who had roles in the granting of oil concessions in Libya. Galic purportedly was particularly persuasive with and had the ear of Fuad Kabazi, the Libyan Minister of Petroleum Affairs from March 1964 until April 1967. After desultory activities by the Galic group, which were of no consequence in obtaining the concessions, information was received in March 1965 by a French banking concern in which plaintiff had a financial interest that deRovin was an imposter with an extensive criminal record, which information plaintiff forwarded to the defendant. By this time, the defendant, on the basis of the Galic group's actions or non-actions, was of the view that its purported power to aid in obtaining concessions was greatly exaggerated, if not false. Thus, the intelligence about deRovin's background persuaded the defendant that any activity by the Galic group on its behalf would be detrimental rather than helpful in its efforts to obtain concessions; moreover, it concluded that the Galic group's status in Libya had been misrepresented, as well as its ability to advance procurement of the concessions by personal negotiations. Also, in violation of their agreements,

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[20]T.R., 464, 2460-63, 2536, 2806.

it appeared that deRovin had assigned a portion of his compensation to Galic, and Ogbi had assigned 10% of his commission to deRovin, who conveyed half of that 10% to Galic. * * * Accordingly, the defendant decided to terminate its relationship with the Galic group. Under all the circumstances, the defendant was justified in its course of action. The defendant, however, was apprehensive—and with reason—that a forthwith termination would cause the Galic group to try to undermine its efforts to obtain the concessions. To protect itself against hostile action by the Galic group, the defendant enlisted the services of others deemed reliable and secured from Chase Manhattan Bank a statement of defendant's financial responsibility, which later was submitted with its competitive bid for the concessions. Thereupon, on July 16, 1965, defendant, by cable, notified Galic and deRovin that it would not utilize their services in acquiring Libyan oil concessions and released each of any obligation under the September 1964 agreements signed at London.[21] On the same day the defendant advised plaintiff of its action, by letter. (hereafter the Termination Letter) as follows:

> "With reference to our agreement of December 17, 1964, I have sent the enclosed cables to Mr. Ferdinand Gallic and General deRovin.
>
> "Our agreement of September 18, 1964, with Ogbi Brothers was cancelled on June 19, 1965, when I met Mr. Taher Ogbi in London together with Mr. Gallic.
>
> "In light of your letter to me of March 16, 1965, enclosing the report on General deRovin, any as-

[21]Defendant had previously cancelled its agreement with Ogbi, with Ogbi's consent, in June 1965. Ogbi did remain, however, plaintiff's "agent and attorney-in-fact" in Libya, which he was designated in defendant's application for concessions. This is a ministerial position required by Libyan law and it does not appear Ogbi played a substantial role in the award of the concessions to the defendant.

> sociation that we would have with him would prejudice any possibility we would have of getting any concessions in Libya and I made this perfectly clear to Mr. Galic.
>
> "In light of the above, our agreement of December 17, 1964, releases us from any commitment toward Allen & Company. You are likewise free to make any other arrangements you wish."

Plaintiff did not respond in writing to this letter. Its first written communication on the subject was some eighteen months later, January 31, 1967, when plaintiff inquired as to the status of the oil concessions under circumstances hereafter referred to. The defendant contends that the plaintiff, by its course of conduct during the intervening period, acquiesced in or consented to the termination of the agreement. The plaintiff, on the other hand, contends that Occidental conceived a plan and scheme to exclude it and Galic from the enterpise and to prevent Galic from turning up the concessions as provided for in the claimed joint venture agreement, and concealed its scheme until shortly before July 29, 1965, the last day on which applications for concessions could be filed.

Plaintiff explains that its failure to answer the defendant's termination letter was due to its counsel's advice that the letter was "meaningless" and hence required no answer. Additionally, it contends that several times after its receipt the Allens told Hammer of their counsel's advice, mentioned their continued participating interest in the Libyan concessions and that on those occasions Hammer orally acknowledged the joint venture agreement was still in effect. Hammer denies these incidents and plaintiff's charges. The defendant emphasizes that not only did plaintiff not protest the termination in writing or otherwise and remained silent for more than eighteen months, but both Allens agreed that defendant was justified in terminating Galic and acknowledged that a claim Galic

had made against defendant under the September 18, 1964 agreement was unfounded.

Upon the entire record I find that the defendant by substantial evidence has fully sustained its defense that, if there were an enforceable agreement, it was terminated with plaintiff's consent and acquiescence. It strains credulity to the breaking point to believe that if the Allens, experienced investment bankers, believed they had a 25% interest in a joint venture for the exploration of oil with a potential "of hundreds of millions of dollars of profit in the deal,"[22] they would not, upon receiving a written notice wrongfully terminating the arrangement, have protested or objected forthwith orally or in writing. And it defies reality and experience even more to believe that their experienced attorney, familiar with the terms of the claimed agreement and having been consulted immediately upon receipt of the termination letter, would ignore it and not have counseled his clients to challenge forthwith in writing the asserted unjustified termination, even if he were of the view that the letter was without legal effect. Disbelief is heightened by the circumstance that according to the testimony of the Allens they stated to the attorney upon receipt of the termination letter that they felt Hammer was "tricky" and was trying to "freeze [them] out."[23] This court is fully sensitive to the fact that in essence it is rejecting the testimony of the attorney and his clients on this subject—obviously a matter of concerned deliberation.[24] The conclusion is based not only upon a word-by-word study of the extensive trial record, the court's trial notes which include its contemporary appraisal of witnesses, the demeanor of witnesses who testified on the issues and the reasonable inferences to be drawn

[22]T.R., 447.

[23]T.R., 484-485.

[24]Cf. *Fuller v. Dilbert*, 244 Supp. 196 (S.D. N.Y. 1965), aff'd 358 F. 2d 305 (2d Cir. 1966).

from established facts and all attendant circumstances, but also upon objective facts which persuasively establish that plaintiff acquiesced in and consented to the termination of the alleged agreement.

First, in the fact already referred to, the lack of immediate protest to the letter of July 16, 1965. Second, is the fact that for a year and a half thereafter plaintiff made no claim or inquiry, orally or in writing, as to any alleged interest in the Libyan venture. It was not until January 31, 1967, the day the public press carried news of a large oil discovery by the defendant in the Libyan concessions, that plaintiff first inquired of the defendant as to the status of the "concessions granted to Occidental through the intervention of Ferdinand Galic."

I reject the testimony of the Allens that on several occasions subsequent to the receipt by them of the termination letter, Hammer orally acknowledged that the claimed contract was still in effect. Their trial testimony, at points, is contradictory and, in several instances, is at variance with their pretrial depositions. In light of their attitude that they considered Hammer tricky and was trying to freeze them out, it is of significance that if in fact Hammer had acknowledged the continued existence of the alleged joint venture and plaintiff's 25% interest therein, they did not ask for a written confirmation of the acknowledgment or send one themselves or request a withdrawal of the termination letter.

Third, is a written disclaimer by the Allens of relationship with Occidental. Allen & Company Incorporated (the Company) had been organized by plaintiff in March 1964 to handle investment matters formerly carried on by it; Herbert Allen was Chairman of its Board of Directors and Charles Allen was also a director; they and their families owned a majority of the corporation's stock. Plaintiff was aware in the latter part of February and no later than early March 1956 that Occidental had been awarded the two concessions by the Libyan government.

In May 1966 the Company was part of the underwriting group in a $61,186,300 convertible subordinated debenture issue of defendant. The Company filed an underwriter's questionnaire wherein it stated:

> "Neither we or any of our directors, officers or partners have a material relationship with the company [Occidental]."

The disclaimer was signed by Herbert L. Stern as Vice President. Charles and Herbert Allen each denied knowledge of this disclaimer, but I find that each knew of it. The disavowal of knowledge borders on the frivolous in view of all the evidence of the relationship between the plaintiff, the two Allens and their corporate creation, Allen & Company Incorporated. Stern was under the direct supervision of the Allens, had been in the plaintiff's employ for twenty years prior to the formation of Allen & Company Incorporated, continued to serve plaintiff thereafter and had access to all files, plaintiff's as well as the Company's. Stern was not called as a witness by plaintiff nor was his deposition offered. The plaintiff argues that in any event the representation was not material. I hold it was.[25] Additionally, the registration statement and the prospectus issued in connection with the public offering referred to the Libyan concessions as owned by defendant and stated that fifteen million dollars of the proceeds would be used for oil and gas development in Libya and elsewhere. There is no statement that plaintiff had any in-

[25]Clearly a reasonable investor about to purchase Occidental securities under the offering would have considered it important to know that an underwriter's principals or directors had a 25% partnership interest in a project as to which the borrower, Occidental, intended to apply all or a portion of $15,000,000 of the proceeds of the issue. An investor given such information might view with more critical judgment the soundness of the offering. Cf. *Affiliated Ute Citizens v. United States*, 406 U. S. 128 (1972).

terest in the Libyan oil venture; if in fact it had such an interest, this was an omission of a material fact.[26] In any event, even though it may be as plaintiff asserts that no purchaser of Occidental was misled, the representation that no officer or director of Allen & Company Incorporated had a material relationship to Occidental and the omission in the prospectus of any claimed interest by plaintiff in the Libyan oil venture are admissions against interest and militate against the contention that it did not acquiesce in the termination notice. The omission from the prospectus of any claimed interest by plaintiff in the Libyan concessions referred to therein takes on even greater significance since plaintiff's counsel, who had knowledge of the termination letter, read the document shortly after it was executed and neither questioned it nor suggested any changes or amendments.

Fourth—and even more compelling—is a letter sent by plaintiff to defendant on August 2, 1966, more than a year after the termination letter. Plaintiff requested that defendant confirm to plaintiff's auditors those ventures in which it had a participating interest with the defendant, and after identifying two specific ventures unrelated to this case, inquired as to "[a]ny other program in which we have a participation." The defendant in answering named a third venture, a 1963 project also unrelated to this case. Significantly, plaintiff never mentioned the Libyan project and it accepted defendant's statements which likewise made no reference thereto. Thus, each recognized the non-

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[26] A prospective purchaser of securities would also be entitled to know that Occidental did not own the Libyan oil concessions 100% and that in the event of profit it would only receive 75% thereof. Cf. *Sonesta Int'l Hotels Corp. v. Wellington Assocs.*, 483 F. 2d 247, 251 (2d Cir. 1973); *Chris-Craft Indus., Inc., v. Piper Aircraft Corp.*, 480 F. 2d 341, 362-63 (2d Cir.), cert. denied, 414 U. S. 910 (1973); *SEC v. Texas Gulf Sulphur Co.*, 401 F. 2d 833, 849 (2d Cir. 1968) (en banc), cert. denied, 394 U. S. 976 (1969).

existence of any joint venture with respect to the Libyan oil exploration.

Fifth, plaintiff, fully aware that substantial expenditures were being made by defendant over an extended period not only made no inquiry of it as to the costs, but never offered to make any financial contribution thereto, and failed to set up a single penny on its books as a reserve against the Libyan oil venture or make any entry therein as to any contingent liability.

Upon this record the proof is overwhelming that plaintiff, by its acts and conduct, acquiesced in and consented to the termination of its claimed agreement with defendant; indeed, the conduct of plaintiff is also sufficient to sustain the defense of estoppel.[27] I further find that plaintiff agreed with the defendant that by reason of the acts and conduct of the Galic group it was justified in cancelling its agreement with the Galic group; and I find that in sending the termination notice so accepted by plaintiff, the defendant did not violate any of plaintiff's rights. In sum, the evidence warrants the conclusion that the plaintiff sought the best of two worlds as to the Libyan oil project. If oil was struck, it could claim a 25% profit in the joint venture; if it turned out to be a dry hole, it could disavow liability for 25% of the loss, pointing to defendant's termination letter. Plaintiff cannot have it both ways. The highly speculative nature of the enterprise, entailing a risk of many millions of dollars of which plaintiff was well aware, gives added emphasis to plaintiff's acts and conduct and its silence for more than a year and a half until the public announcement of an oil gusher in the concession. Plaintiff, aware that heavy costs were involved both before and after obtaining the concession, stood by silently while

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[27] *Electrolux Corp. v. Val-Worth, Inc.*, 6 N. Y. 2d 556, 564, 161 N. E. 2d 197, 190 N. Y. S. 2d 977 (1959); *Pollitz v. Wabash R. R.*, 207 N. Y. 113, 129, 100 N. E. 721 (1912); *Rothschild v. Title Guaranty & Trust Co.*, 204 N. Y. 458, 97 N. E. 879 (1912).

defendant assumed the risk of an extremely heavy financial loss. The totality of its conduct forecloses it from now being heard. What was said in another case involving a mining claim is particularly applicable here:

> "A person may not withhold his claim awaiting the outcome of a doubtful enterprise and, after the enterprise has resulted in financial success favorable to the claimant, assert his interest, especially where he has thus avoided the risks of the enterprise. The injustice of permitting one, holding the right to assert an interest in property of a speculative character, to voluntarily await the event and then decide, when the danger is over and the risk has been that of another, to come in and share the profit, is obvious. In such circumstances, persons having claims to property are bound to use the utmost diligence in enforcing them.
>
> "Silence under such circumstances when, according to the ordinary experience and habits of men, one would naturally speak if he did not consent, is evidence from which assent may be inferred. Where a plaintiff, with knowledge of the relevant facts, acquiesces for an unreasonable length of time in the assertion of a right adverse to his own, the court may presume assent to the adverse right, and the consequent waiver of the right sought to be enforced."[28]

DID GALIC "TURN UP" THE CONCESSIONS?

The foregoing findings should terminate the matter but, since there may be appellate review, it is also desirable to pass upon the issue of whether the concessions

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[28] *Pfister v. Cow Gulch Oil Co.*, 189 F. 2d 311, 315 (10th Cir.), cert. denied, 342 U. S. 887 (1951).

awarded to Occidental were "turned up" by Galic.[29]

In 1965, the Kingdom of Libya publicly invited companies to submit bids for oil concessions in Libya, such bids to be filed not later than July 29, 1965. On that date, the defendant[30] submitted its bid for oil concessions, which included a proposal for the development of a chemical fertilizer industry and an agricultural project. In all, one hundred twenty applications or bids were submitted by thirty companies or combinations of companies, including American companies such as Esso, Phillips Petroleum, Sun Oil, Mobil, Gulf, Sinclair, Cities Service, Richfield, Texaco and Atlantic. As previously noted, on February 20, 1966 the Libya government publicly announced the award of the concessions of Blocks 42B and 44 to Occidental of Libya, Inc. The plaintiff claims that these concessions were "turned up" as a result of Galic's intervention and efforts.

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[29]Plaintiff's present contention that Galic was not required to "turn up" the concessions for plaintiff to be entitled to an interest in them disregards its own theory of the alleged agreement as well as its counsel's repeated stated position. The December 17, 1964 letter that plaintiff relies on to support the alleged agreement specifically states "* * * Occidental will share on the basis of 75% for us and 25% for you [plaintiff] on *anything Ferdinand Galic turns up* [emphasis added]." Further, when Herbert Allen wrote to Hammer on January 31, 1967 inquiring as to the status of the alleged joint venture, he stated: "We have been reviewing our agreement with Occidental Petroleum which provides that Occidental and Allen & Company will participate, on a 75%-25% basis, in any venture resulting from the Libyan oil concessions granted to Occidental *through the intervention of Ferdinand Galic* [emphasis added]." See also ¶ 5 of the Amended Complaint. Moreover, much evidence otherwise inadmissible was received on representations by plaintiff's trial counsel that "one of the issues is whether Galic turned up the concessions * * *" See, e. g., T.R., 464; see also citations at footnote 18.

[30]Through its subsidiary, Occidental of Libya, Inc.

The term appears in the letter of December 17, 1964 previously quoted. The complaint alleges that, pursuant to the agreement of joint venture, the defendant "utilized the intervention and services of . . . Ferdinand Galic on behalf of the said joint venture and . . . Galic turned up two oil concessions" awarded to defendant. The nature of the services intended by the expression "turned up" is nowhere clearly defined by the parties. At best, such services could entail public relations activities, creating goodwill for Occidental in support of its application for the concessions, facilitating ready access to, and discussions with, Libyan officials who were influential in the granting of the oil concessions—in general, establishing a good public image of Occidental as a responsible and competent bidder whose development of oil concessions would be advantageous to Libya. At worst, they could involve influence peddling, if not corruption of public officials. It is assumed, however, that "turned up" was intended to encompass only legitimate activities.

In any event, the parties do not agree as to the scope of the services required of Galic. Plaintiff contends that "turned up" did not mean that Galic had to be the procuring cause of the granting of the concessions; that Galic duly performed thereunder if he initiated governmental interest in the project on behalf of the joint venture and rendered public relations services in visits and discussions of the matter with the Minister of Petroleum and other officials; supplying such information as the Ministry of Petroleum required and using persuasion to induce the Libyan Ministry to exercise its discretion favorably with respect to Occidental's application.

The defendant's position is that due performance required that the concessions be obtained through the efforts and intervention of Galic—that he was to play a significant role in procuring the award. In support of this view, the defendant emphasizes that at the London conference repeated representations were made by the

Galic group that the award of the concessions could be advanced through negotiations with government officials, and that the letter agreement then signed with Galic provides that: "If for any reason Occidental does not acquire Oil and Gas concessions in Libya as the result of your intervention Occidental will be free of any obligation whatsoever towards you."

Plaintiff's contention as to the nature of the services Galic was required to render is somewhat restricted. Nevertheless, even accepting plaintiff's definition and applying its standard, the record does not support the claim that Galic performed as required.

Despite the termination of Galic's services by Occidental in July 1965, plaintiff contends that with the defendant's consent Galic continued to exert efforts in furtherance of, and was instrumental in, procuring the concessions for defendant—in the words of plaintiff's trial counsel, he "was highly influential in obtaining the granting of these concessions to Occidental".[31] In large measure this claim is based upon Galic's purported relationship with Kabazi, who was the Minister of Petroleum Affairs, Chairman of the Libyan High Council of Petroleum Affairs and a member of the Council of Ministers. Essentially, it is contended that Galic had the confidence of Kabazi, who, by virtue of his offices, played a dominant role in the appraisals of the various applications for concessions; that Galic assured Kabazi that Allen & Company would supply defendant with all financial support required for the project; that Galic personally persuaded Kabazi to support Occidental's application, and Kabazi in turn influenced the Council of Ministers, the final authority, to exercise their discretion so as to grant the defendant the concessions. However, the record does not support these and other claims. The evidence establishes that the bidding for the concessions was strictly competitive and that

[31] T.R., 24.

Occidental received the award solely on its own merits and financial capacity.

Galic's testimony, enlarging upon ephemeral activities of a so-called public relations nature that purportedly influenced or furthered the award of the concessions to defendant, is belied by his own statements in letters and cablegrams sent to deRovin. It would be a work of supererogation to list the many falsehoods and contradictions in that correspondence which negate the claim now advanced that Galic played any role in furthering the application. Several items may be briefly noted. In July 1965, during the period Galic claims he was the confidant of Kabazi, he complained to deRovin that he could not get to speak to Kabazi—that twice he was rebuffed. On February 22, 1966, two days after the public announcement of the award, Galic wrote to deRovin that he had just learned Occidental had obtained the concessions and asked if deRovin could learn what blocks or concessions had been granted to it—an item of some significance in view of the Kabazi letter of February 16, 1966, yet to be discussed. Caught in a web of falsehoods by this correspondence, Galic sought to extricate himself by testifying that he lied to deRovin to mislead him and to keep him out of the deal. But there is more than this perfidious conduct which mars his testimony. His glib and facile explanations of falsehoods and contradictions are implausible. A careful word-by-word reading of the record compels the conclusion that Galic's testimony is utterly lacking in credibility.

Plaintiff, however, seeks to bolster its claim that Galic did indeed render significant service by a letter dated February 16, 1966—four days before the public announcement of the granting of the concessions—which Kabazi testified he personally typed, signed and mailed to Galic that day, and which Galic testified he received within a day or two of its date. This letter engendered much controversy, if not acrimony, among the lawyers and was the

subject of extensive and conflicting expert testimony. An inordinate amount of time was spent on it, and extraordinary expenses incurred by the parties for the experts and trips of witnesses to and from Europe.

As this court noted several times during the trial, the letter's importance in terms of the basic issues in the case was highly exaggerated.[32] The defendant contends that the letter is spurious in that it was backdated, a claim that the court finds has merit. Apart from the issues, however, its contents are inadmissible hearsay and include self-serving statements. Moreover, even if it were admissible, it is of minimal probative value. Nevertheless, the letter does serve to expose the acts and conduct of both Galic and Kabazi.

The "Kabazi" letter reads:

"KINGDOM OF LIBYA

MINISTRY OF PETROLEUM AFFAIRS

Tripoli, 16/2/66

Special File

Mr. Ferdinand Galic
41, Rue Spontini
Paris 16
France

Dear Sir,

You will be pleased to know that shortly Occidental Petroleum will receive a favorable reply in its bid for petroleum concessions in Libya.

As I have repeatedly stated to you, in the interest of my country, our policy in the granting of petroleum concessions is based on capacity of the companies to absorb fully their output. As you well know, the interest of my country is above every thing in my heart. I wish, there-

[32]See, e. g., T.R., 2973, 2978.

for to remind you, that you have assured me on two very important points:

1. that Occidental Petroleum is in a position to absorb any amount of oil found;

2. that Messrs. Allen & Co. of 30, Broad Street, New York, N. Y., USA, assures the necessary financing involved.

With sincerest regards.

truly Yours,

/s/ FUND KABAZI
(Fund Kabazi)
Minister of Petroleum Affairs"

In the light of the well-documented official files kept by the Libyan government of all bids for concessions and supporting documents, and the Libyan law protecting the confidentiality of documents and decisions until officially released, the letter contains within itself the seeds of suspicion and gives one cause to wonder why this "unsolicited" extracurricular letter was sent. It is unnecessary to resolve the conflict between the expert witnesses as to the make of the machine upon which it was typed, or whether a carbon copy was made. Objective facts are more compelling. Although Galic testified he received the letter within a day or two after its date, as already noted, on February 22, he wrote to deRovin asking him to try to get information as to the award of the concessions and the block numbers. Subsequently, even after the concession contracts were signed, Galic's letters to deRovin show a lack of knowledge regarding the concessions. Further, both Kabazi and Galic testified that from the inception of their relationship they had agreed to destroy all correspondence between them and each testified he had adhered to the arrangement. In this circumstance, it is singular that the only document not destroyed is the let-

ter dated February 16, 1966. It is also odd that the letter is written in English, although in their prior correspondence Kabazi wrote in Italian and Galic responded in French. Although Occidental obviously was a much interested party, no copy was ever sent to it by Galic or Kabazi. Its existence was first made known to Occidental during the course of the pretrial proceedings late in 1967. Charles Allen testified he received a copy in the mail in March 1966 without a covering letter. Galic, in contradiction, testified he never mailed a copy in March 1966 to Allen but to a lawyer for Allen & Company. The lawyer, on the other hand, testified he did not see a copy of the letter until the spring of 1967.

Kabazi testified that to assure secrecy he immediately destroyed the carbon used to make the copy and personally placed the copy in a "special file" under lock and key in his office, which file he turned over to his successor upon leaving government service. Yet an official government certificate in evidence states that no such letter is contained in the official files.[33] In all prior correspondence Kabazi wrote on private stationery; here, official government stationery was used. In no other instance did Kabazi make a copy of his letters to Galic. The existence of the letter was never made known by Kabazi to either the members of the High Petroleum Council or to the Council of Ministers. The disclosure of the confidential information in the February 16 letter, if sent four days before the award, constituted, as Kabazi knew,[34] a criminal offense under Libyan law that would have subjected him to criminal prosecution.

Even more singular is the statement in the letter and Kabazi's testimony that he had relied on Galic that Allen & Company "assures the necessary financing involved."

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[33]Cf. *Desheng v. City of New York*, 176 N. Y. 475, 485, 68 N. E. 880 (1903).

[34]T.R., 1719-20.

The official files of the Libyan government contain no document that refers to Allen & Company or Galic; the Libyan government at no time requested Allen & Company to submit any financial data in support of defendant's application; Allen & Company never submitted any such information; the defendant's bid for the concessions contains no reference to Allen & Company. Despite Kabazi's claimed reliance upon Galic's personal assurance of Allen & Company's support of the project, he never asked Galic for any documentation that Allen & Company was in fact Occidental's financial backer, and never requested a financial statement of, or drew a credit report on, Allen & Company. The only financial data submitted in defendant's bid related to Occidental, and included a letter from Chase Manhattan Bank setting forth Occidental's net worth as well as financial reports of Occidental.

As to the further statement in the February 16 letter that Kabazi was assured by Galic that Occidental Petroleum was in a position to absorb any amount of oil found, the fact is that Occidental as part of its bid in July 1965 had submitted a letter of commitment from Signal Oil and Gas Company, which had the requisite refining and marketing capacity. Indeed, in July and August 1965, eight months before the date of his letter to Galic, Kabazi already recognized that Signal was a "good company"[35] with worldwide facilities and a marketing capacity sufficient to absorb any oil Occidental found.

When totality of evidence warrants the finding that the Kabazi letter was deliberately contrived and written sometime after the awards were announced on February 20, predated to February 16 and sent to Galic, in an effort to aid Galic in a contemplated lawsuit against Occi-

[35]T.R., 1592, 1689-93.

dental.[36] The record establishes that Galic's principal activities after he received the termination notice in July 1965 were not intended to and did not further defendant's interest in obtaining the concessions; rather, they were directed to furthering his own interests in building up a claim against defendant while he awaited the award of the concessions to Occidental as a propitious time to commence his legal action. The objective factors establish that such was the purpose of the Kabazi letter. I find Kabazi's testimony, just as Galic's with inherent contradictions and implausibilities, incredible and unworthy of belief. Kabazi's testimony reflects bias in favor of Galic and hostility towards defendant.[37] One searches in vain for any tangible or credible evidence that in fact Galic, whether by reason of his claimed relationship to Kabazi or otherwise, played any part in furthering the application for the concessions. Occidental was the successful bidder for the award not only because of its financial responsibility and technical competence, but in some measure because of the inclusion in its bid of the fertilizer and agricultural projects, one of which obligated Occidental to develop a thirty million dollar ammonia plant even if no oil were found.[38]

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[36]On October 13, 1965, he wrote to Herbert Allen: "Yesterday the lawyers got in touch with me on account of Occidental Petroleum, they suggested that I do nothing and wait until Occidental Petroleum gets the concessions * * *. I will by no means be associated with Dr. Hammer and Occidental Petroleum, all I want is the reimbursement of the damage. The lawyer says that for the time being, I can only claim the reimbursement of the expenses, but when they will have the concessions, I can claim for the damage, whether they find oil or not."

[37]During his deposition, when questioned closely about Galic, his evasive responses were such that the proceedings were disrupted for a period. T.R., 1856, *et seq.*

[38]T.R., 1647.

A final word. While the court, as to material matters, has rejected the testimony of plaintiff's principal witnesses, it does not necessarily follow that it has adopted in totality Hammer's testimony which, as to some matters, was not entirely acceptable. However, the findings and disposition made herein are warranted by credible evidence, documentary evidence and the burden of proof on the respective parties.

The foregoing, together with the matters stipulated by the parties in the pretrial order to the extent they may not be included herein, shall constitute the court's findings of fact and conclusions of law.

Judgment in favor of the defendant may be entered accordingly.

Dated: New York, New York
August 30, 1974

EDWARD WEINFELD
United States District Judge

Memorandum of Weinfeld, D. J., *Re* Correction to Opinion.

UNITED STATES DISTRICT COURT

UNITED STATES COURTHOUSE

New York, N. Y. 10007

Chambers of
Judge Edward Weinfeld

August 31, 1974

67 Civil 4011
Allen & Company v.
Occidental Petroleum Corporation

Memorandum to Counsel:

The Court's opinion filed on August 30, 1974 contained on page 19 a sentence which should have been omitted, but inadvertently was included in copying from a final draft. The Court has this day corrected the error and initialled the page, as well as a correction on page 45.

EDWARD WEINFELD
United States District Judge

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(19) misrepresented, as well as its ability to advance procurement of the concessions by personal negotiations. Also, in violation of their agreements, it appeared that deRovin had assigned a portion of his compensation to Galic, and Ogbi had assigned 10% of his commission to deRovin, who conveyed half of that 10% to Galic. Additionally, there is evidence to support a finding that as early as March 1965 Galic was working to obtain oil concessions for a German company, which activity was hostile to defendant's interest and in violation of his agreement of September 1964. Accordingly, the defendant decided to terminate its relationship with the Galic group. Under

all the circumstances, the defendant was justified in its course of action. The defendant, however, was apprehensive—and with reason—that a forthwith termination would cause the Galic group to try to undermine its efforts to obtain the concessions. To protect itself against hostile action by the Galic group, the defendant enlisted the services of others deemed reliable and secured from Chase Manhattan Bank a statement of defendant's financial responsibility, which later was submitted with its competitive bid

* * *

(45) bidder for the award not only because of its financial responsibility and technical competence, but in some measure because of the inclusion in its bid of the fertilizer and agricultural projects, one of which obligated Occidental to develop a thirty million dollar ammonia plant even if no oil were found.[39]

A final word. While the court, as to material matters, has rejected the testimony of Kabazi and Galic, it does not necessarily follow that it has adopted in totality Hammer's testimony which, as to some matters, was not entirely acceptable. However, the findings and disposition made herein are warranted by credible evidence, documentary evidence and the burden of proof on the respective parties.

The foregoing, together with the matters stipulated by the portion in the pretrial order to the extent they may not be included herein, shall constitute the court's findings.

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[39]T.R., 1657.

Plaintiff's Contentions as to Contracts Between the Parties.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Plaintiff relies on the testmony of Herbert Allen, admissions wrung from Armand Hammer, and certain exhibits to establish the terms of the contracts between the parties. In this connection the unexplained failure of defendant to call Mr. Hammer to the stand warrants, if it does not mandate, the inference that his testimony would have been unfavorable to defendant and favorable to plaintiff, even though his deposition was taken and read. *Chesapeake & O. Ry. Co. v. Richardson*, 116 F. 2d 860, 865 (6 Cir. 1941).

The first contract orally made in London in September 1964

The first contract embodying the arrangement relating to the first concessions—on which this suit is based—was orally made in London, England on or about September 16, 1964 (444, 872). Thus, Mr. Hammer conceded (872):

> "Q. In other words, you are saying to us that the arrangements referred to in Exhibit 12 [Exhs. 70 and 71] with respect to the first concessions related to the conversations you had with Mr. Allen in London? A. Yes.

---

*Mr. VanVoorhis expressly analyzed the contracts in the manner set forth in this memorandum in his opening statement (4, 6-7), in replying to defendant's motion to dismiss at the close of plaintiff's case (2618-19) and throughout the trial (e. g., 2618-19).

Plaintiff's Contentions as to Contracts Between the Parties

"Q. Is that correct? A. Correct.

"Q. And did not relate to any other conversations that you had with Mr. Allen? A. Correct."

The subject matter of the first contract, i. e. the first concessions are those referred to in the contract with Ogbi and which were mentioned in London. Thus Herbert Allen testified (449):

"Q. By the way, to what was this 75-25 deal supposed to apply? A. To the two Libyan concessions.

"Q. Now, up to this point, had anyone mentioned specific numbers of concessionnaires? A. Two numbers were mentioned, but they are a little vague in my mind. Two numbers were mentioned."

This was corroborated by Mr. Hammer as follows (871):

"Q. You go on to say: 'We agree to the same arrangements with you on the possible second concessions as on the first concessions.

"Do you see that? A. Yes, sir.

"Q. What were the first concessions to which you made reference? A. Those were the concessions mentioned in the arrangement with Mr. Ogbi.

"Q. Do you mean bidding blocks 32 and 59? A. Yes."

Parenthetically area numbered 59 was later broken down to include the concessions actually obtained, 42B and 44 (814).

The terms and condtions of the first contract were that defendant would manage the venture, that profits, losses and expenses would be shared 75% to and by defendant and 25% to and by plaintiff; that all expenses to be shared would relate to the Libyan venture and that de-

fendant would submit bills or expense vouchers to plaintiff so that plaintiff could and would pay its share (447-450).

Thus Mr. Allen testified that on or about September 16, 1964, the following contract was entered into (447-450):

> "A. I told Dr. Hammer Charles had agreed to go alone on a 75-25 basis because he said, Herbert, after all, if Ferdinand says if it is going to be hundreds of millions of dollars profit in the deal, what difference does it make. I told Dr. Hammer, 'Armand, as far as I am concerned, I would like to disregard what my brother said, but I love him and I am going to go along with him, we are partners together, if the deal will be on a 75-25 basis. But he said I will manage the deal. I said all right, Armand, you manage the deal, we will go on—you have 75 per cent of the profits, you have 75% of the losses, and you have 75 percent of the profits, losses and expenses, and Allen & Company has 25 per cent of the profits, 25 per cent of the losses and 25 per cent of the expenses, and whenever you present us with a bill, we will settle with you.
>
> "And he said, 'Fine, Herbert.' He repeated again, 'but I want to manage this deal.'
>
> "I said, 'All right, Armand,' 'and we shook hands then and there on that deal.'
>
> "Q. Was there anything else said about expenses? A. As the expenses were presented to us, we would pay them.
>
> "Q. Anything else? A. And I told him—yes, very definitely. I told him that under no condition did I want him to bill Allen & Company for any of his other trips in Europe which he told me he

was working on, I said, 'Don't give me any other bills other than that relating to the Libyan matter. I will pay all expenses relating to the Libyan matter, but don't throw anything else in on me.'

"Q. What did he say to that? A. He laughed and he said, 'Oh, don't worry about that, Herbert.'

* * *

"A. I told Armand Hammer—Armand Hammer told me he was going into a meeting with these people, and I said, 'Armand, I want to go in the meeting too.'

"He said, 'It isn't necessary, Herbert. I am the manager of this deal, you can go on and enjoy yourself.'"

That such arrangement was made in London in September is as stated, corroborated by contemporaneously written documents. Thus, on December 9, 1964, Herbert Allen wrote to Armand Hammer (Exh. P-67) in part as follows:

> "As per our agreement we are prepared to pay our 25% of the expenses whenever they are presented and will mutually with your good self approve or disapprove the various items."

To be noted is the fact that Dr. Hammer did not deny that the agreement was a 75-25 arrangement and that it had previously been made. To the contrary Dr. Hammer in his reply dated December 17, 1964 merely stood on the terms of the arrangement with Galic (Exh. P-69), which did not provide for payment of Galic's expenses (Exh. P-36).

In our discussion of the second contract we will show how Herbert Allen's testimony of the September 16, 1964 arrangement is corroborated by the letter of December 17, 1969 and by other contemporaneously written documents as well as by Dr. Hammer's admissions.

Plaintiff's Contentions as to Contracts Between the Parties

The Second Contract made in December 1964

Both Herbert Allen and Dr. Hammer testified that this arrangement was made over the telephone about December 17, 1964 and probably between December 9 and December 17, 1964 (868, 453). They possibly dispute as to who called whom—Herbert Allen said that Dr. Hammer called him (453) while Dr. Hammer said that he was not sure whether he called Herbert or Herbert called him (865).

Dr. Hammer was quite vague about the conversation saying only that Herbert Allen wanted something in writing confirming "our arrangement with Allen & Company" and that Herbert Allen "wanted it to cover both situations, the Ogbi situation and the Frottier situation" (865). Dr. Hammer further said that Herbert Allen "was particularly desirous of making sure that the same arrangement that pertained to any possible concessions we might receive under the arrangement with Ogbi would apply to any possible concessions we might receive under the arrangement with Mr. Frottier" (871-2).

It is perfectly clear that Herbert Allen knew nothing about any arrangement made by defendant with Frottier prior to December 9 or December 17, 1964 and that the second contract was instigated by Dr. Hammer. In any event there is no substantive difference between Dr. Hammer's version of the pre-December 17, 1964 conversation and that of Herbert Allen.

Herbert Allen testified that shortly before December 17, 1964, Dr. Hammer called him on the telephone (453). He further testified to the conversation as follows (453-4):

> "A. He told me that he had been presented or had been offered another concession and did I want to go along on the same basis as the first basis,

Plaintiff's Contentions as to Contracts Between the Parties

> that, according to our agreement, handshaken agreement in London on September 16, 1964, that is, that Occidental of the new concession would have 75 per cent of the profits, 75 per cent of the expenses, and 75 per cent of the costs, Allen & Company would have 25 per cent of the expenses, 25 per cent of the costs, and 25 per cent of the profits, and I said that I did. I would. And he said he would send me a letter."

Thus, at that point in time, on or about December 17, 1964, there were two separate arrangements, the terms of which were the same, to wit (1) the arrangement made in London covering the concessions referred to in the Ogbi contract (ii) the arrangement made over the telephone concerning the concessions mentioned by Dr. Hammer in the pre-December 17, 1964 telephone conversation which, according to Dr. Hammer, were the concessions alluded to in the contracts between defendant and Galic and Frottier dated November 25, 1964 (Exhs. P63, P64).

As he said he would, Dr. Hammer wrote to Herbert Allen under date of December 17, 1970 (Exh. 70). That writing, by reference, evidences in principal part the oral agreement made in London in September 1964 as testified to by Herbert Allen.

Since it is the "first concessions" covered by the first contract which are the subject of this lawsuit, i. e. the concessions mentioned in London and which were obtained, it is apparent that the letter of December 17, 1964 does not constitute but contains evidence of the agreement covering the first concessions made in London. So Herbert Allen testified in response to this Court's questions (466-469):

Upon its face, this brief letter dated December 17, 1964 (Exhibits P 70 and P 71), does not purport to set forth

completely the agreement between the parties. Under cross examination, Charles Allen said that it did, but this was a conclusion of law by one who did not make the contract, which is obviously contradicted by the factual testimony including admissions by Dr. Hammer.

The letter does not mention the undisputed fact that defendant was to be the managing venturer, that it was to bill plaintiff for its share of the expenses as the venture progressed, nor does it designate by number or otherwise the specific blocks which were the subject matter of the venture as agreed to in London. The letter assumes that the first concessions have already been turned up by Galic subject to being granted by the Libyan government and that the second concessions would be also if they likewise were granted. In each instance Allen & Co. was to participate on a 25 per cent basis.

No matter how the phrase "turn up" is interpreted, and no matter to which contract it applies, it is perfectly evident that Galic turned up the concessions which were actually granted. Moreover, it is perfectly evident that the joint venture contracts between plaintiff and defendant were not contingent upon performance by the parties under the contracts between defendant on the one hand and Galic, Ogbi and deRovin on the other hand.

Expenses to be Mutually Agreed Upon

As previously noted, both Herbert Allen and Dr. Hammer testified that in the pre-December 17, 1964 conversation, Dr. Hammer said that he would write to Herbert Allen concerning the arrangements between the parties. Accordingly, under date of December 17, 1964 (Exhs. P 70 and P 71) defendant wrote to plaintiff as follows:

Plaintiff's Contentions as to Contracts Between the Parties

"Mr. Herbert Allen
Allen & Company
30 Broad Street
New York, New York

Dear Herbert:

Confirming our recent conversation regarding possible concessions in Libya, we agree to the same arrangements with you on the first concessions, namely, Occidental will share on the basis of 75% for us and 25% for you on anything Ferdinand Galic turns up. This includes sharing costs and profits.

If the above is satisfactory, please sign and return the enclosed copy.

With best regards.

Sincerely yours,

OCCIDENTAL PETROLEUM CORPORATION
/s/ Armand Hammer, President"

AH:dp

This had been preceded by a letter from Herbert Allen to Occidental, dated December 9, 1964, advising defendant of Galic's complaint that he was paying all of the expenses and stating:

> "As per our agreement we are prepared to pay our 25% of the expenses whenever they are presented and will mutually with your good self approve or disapprove the various items." (Exh. P 67).

After receiving the letter of December 17, 1964 Herbert Allen telephoned Hammer, in consequence whereof the words "to be mutually agreed upon" were inserted

into the letter respecting costs*. The application of this insertion to costs was indicated in longhand by an arrow leading from it pointing to the typewritten word "costs" where it appeared in the letter. The relating to costs is confirmed by a letter of Herbert Allen to Hammer dated December 24, 1964 (Exh. P72).

Herbert Allen testified in substance that the object of this insertion regarding mutual agreement on expenses was to insure that only such charges would be made to the venture as were normally related to it and that the letter of December 17, 1964 did not conform to Herbert Allen's letter of December 9, quoted above (Exh. P67) (457-8). This was the motive which prompted its insertion. The somewhat possibly broader language "to be mutually agreed upon" preserves the joint control which is normally essential to a joint venture, notwithstanding that defendant was made the managing venturer.

As amended to conform to the earlier oral agreement, the letter of December 17, 1964 (Exh. P71) indicates that the costs were to be mutually authorized or okayed. This does not signify that the amount of each item had to be approved in advance, or that payment of any item or the requisite proportionate amount thereof could be refused if it pertained to activities protecting the common interests within the scope of the venture and if the item was reasonably appropriate and necessary to the proper exploitation of the venture's subject matter.

Respectfully submitted,

JOHN VAN VOORHIS
SAMUEL N. GREENSPOON
POLLACK & SINGER
Counsel for the Plaintiff

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*Mr. Deer testified rather vaguely that Herbert Allen discussed the matter with him and that the idea of inserting controls over costs was suggested but that he did not phrase or dictate the words (2518-2523).

Judgment Appealed From.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The issues in the above entitled action having been brought on regularly for trial before the Honorable Edward Weinfeld, United States District Judge, on September 10, 11, 12, 13, 17, 18, 19, 20, 21, 24, 25 and 26, and October 1, 2, 3, 4, 5, 9, 10, 11 and 12, 1973, and at the conclusion of the evidence the Court having reserved decision, and the Court hereafter on September 3, 1974, the Court having handed down its Opinion, constituting its findings of fact and conclusions of law in favor of the defendant, it is,

ORDERED, ADJUDGED and DECREED: That defendant Occidental Petroleum Corporation have judgment against the plaintiff Allen & Company, dismissing the complaint.

Dated: New York, N. Y.

September 5, 1974

RAYMOND F. BURGHARDT

Clerk

Notice of Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALLEN & COMPANY,

Plaintiff,

against

OCCIDENTAL PETROLEUM CORPORATION,

Defendant.

67 Civ. 4011

SIRS:

Please take notice that Allen & Company, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment made and entered in this action on September 5, 1974 in the office of the Clerk of the United States District Court for the Southern District of New York, which judgment dismisses the complaint herein after trial; and the said plaintiff appeals from each and every part of said final judgment as well as the whole thereof.

Dated: New York, N. Y.
October 3, 1974

Yours, etc.

/s/ SAMUEL N. GREENSPOON
JOHN VAN VOORHIS
POLLACK & SINGER
Attorneys for Plaintiff
600 Third Avenue
New York, New York 10016
867-0606

Notice of Appeal

To:

Clerk of the United States District Court
For the Southern District of New York
United States Courthouse
Foley Square
New York, N. Y. 10007

Clerk of the United States Court of Appeals
For the Second Circuit
United States Courthouse
Foley Square
New York, N. Y. 10007

Phillips, Nizer, Benjamin, Krim
& Ballon, Esqs.
Attorneys for Defendant,
Occidental Petroleum Corporation
40 West 57th Street
New York, N. Y. 10019
977-9700

Excerpts From Transcript.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALLEN & COMPANY,

Plaintiff,

vs.

OCCIDENTAL PETROLEUM CORPORATION,

Defendant.

New York, New York.
September 10, 1973
10:00 A. M.

Before:

Honorable Edward Weinfeld, District Judge.

Appearances:

Eaton, Van Winkle & Greenspoon, Esqs., Attorneys for plaintiff By: John Van Voorhis, Esq., Samuel N. Greenspoon, Esq., and Daniel A. Pollack, Esq., and Paul Z. Lewis, Esq., of Counsel.

Phillips, Nizer, Benjamin, Krim & Ballon, Esqs., Attorneys for defendant By: Louis Nizer, Esq., Neil A. Pollio, Esqs., George Berger, Esq., William Pinzler, Esq., and Mitchell, Silberberg & Knupp, Esqs., by: Arthur Groman, Esq., of Counsel.

* * *

(21) Dr. Hammer testified in his EBT that he made no investigation of the truth of the DeRovin report.

The Court: Did he have to, if he received it from Allen & Company?

Excerpts From Transcript

Mr. Van Voorhis: I don't suggest—

The Court: You suggested that before, Judge Van Voorhis, and I didn't want to interrupt you.

Was the defendant required to investigate the report after he received it from an alleged coventurer?

Mr. Van Voorhis: I have no idea whether DeRovin was a crook or not, but let us assume, for argument, that he was, and I don't suggest that it is of particular importance, perhaps, whether Hammer—he said he made an independent investigation way later on, but, at any rate, the point is, crook or not, DeRovin—that could not be availed of four months later, within 13 days of the last day to act, in order to squeeze out these other people. That is our point on that.

There were other joint ventures in which Occidental and Allen were engaged. I think there will be no dispute that there were joint ventures. One of them concerned phosphate in Morocco, for fertilizer (22) purposes.

I was speaking of their advice from their attorney, and they felt that this letter was disingenuous.

The Court: What answer was made to it?

Mr. VanVoorhis: They felt they would not become involved in answering unless it was legally necessary because they felt that Hammer was playing this very close to his chest.

The Court: Your adversary makes a great point of the fact that this letter was sent and it indicated that an agreement, if one in fact did exist, which they deny—terminated whatever relationship there was, and the contention is made that there was an acceptance of this position by the failure first to challenge the disingenuousness, as you term it, of this letter or to take any action with respect to it at all until a long time afterwards, I believe some 18 months thereafter.

* * *

Excerpts From Transcript

(27) Mr. Van Voorhis:

This brings us to the Kabazi letter. Much is made by the other side of the fact that the formal application to the Libyan Government by Occidental did not mention Allen & Company and did not mention Galic. There is a very clear reason for that, the reason being that they were at pains to try to freeze both of them out so that they would not participate if the venture was successful, and if they had been mentioned in that application, it would have run counter to that purpose.

However, during the period—remember, the last date for filing the applications was July 29th and the concessions, not just this one, but all over Libya, were awarded February 20, 1966, something like six months later.

Shortly before the 20th of February, when the awards were made, in fact, on February 16th, Kabazi undoubtedly in looking over the papers discovered that there was nothing of record that Allen & Company was backing the venture, and Kabazi so testified. He testified in his EBT that that was why he wrote the letter, he wanted to have a record that Allen & Company were backing this financially, and the letter reads as follows:

(28) "Dear Sir"—this is to Galic from Kabazi and Galic, remember, had been vested with a good deal of apparent authority by Occidental, enough so that a contract was made with him with a 4 per cent bruto, which is a pretty valuable contract if there is oil.

"Dear Sir:

"You will be pleased to know that shortly Occidental Petroleum will receive a favorable reply in its bid for petroleum concessions in Libya.

"As I have repeatedly stated to you, in the interests of my country, our policy in the granting of petroleum concessions is based on capacity of the companies to absorb fully their output. As you well know, the interest of

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Excerpts From Transcript

(41) The Court: Well, as I read the briefs, it wasn't participation. Didn't he receive a cash payment for the cancellation of whatever claim he had for a general (42) release? What is the legal significance of that to her then a suggestion that there may have been admissions against interest? A man asserts a claim, the other party opposes the claim and eventually it is traded out on the basis of obtaining a general release.

Mr. Voorhis: If your Honor wants me to argue that out at this time—

The Court: I am just posing the question as I read the briefs, it seems to me that—you are expanding on what is set forth in the brief on that.

Mr. Voorhis: We have briefed that. We have briefed it Saturday morning—

The Court: I know, but how does that establish that the agreement wasn't in existence?

Mr. Voorhis: I don't think your Honor has the briefs in response to the briefs which were submitted by the other side on that.

The Court: I must say more briefs come into the case after the original one than I have ever seen in any case. I was at the Judicial Conference, they were coming in day by day, but my only inquiry to you is this: How does that establish the basic claim of the plaintiff in this case?

Mr. Voorhis: For one thing it is a very (43) strong demonstration that Galic had real power in Libya. This is disputed—

The Court: That is a matter of argument.

Mr. Voorhis: Yes, but argument is based on facts. And Dr. Hammer testified that what Galic said was just hot air and he went to extremes in pointing out how little it matters, but it didn't matter just a little minimal bit to him when he came in and told the Allens to get him off his back, and there are two things, one is it shows his power in Libya. One is that in addition to the sum, paid

in sum, he was paid $16,000 for his disbursements. On December 9, back in '64, I think that is the date, it was in December—

The Court: It would be after 1964, wouldn't it?

Mr. Voorhis: I just want to put this in context.

A letter was written by Hammer objecting to the payment of any of Galic's disbursements because he said in effect this isn't a joint venture until we know whether he is going to produce or not. So when at this time in '66 he paid $16,000 covering Galic's disbursements for doing trips to Libya and partly, he financed this movie, I don't know if your Honor has read about that—

(44) The Court: I read about that too.

Mr. Voorhis: And that is, we want in these objections, we feel that is quite important—but I just want to point out this, this shows (1), that it was recognized that Galic had real power in Libya, and (2), the rule is, as we submit, I believe it is sustained by the cases, that facts admitted in settlement discussions are admissible, and furthermore, the discussion of this interest—you see, the other side's argument, makes a point of Galic having a piece of this lawsuit, and if that is to be considered at all, it should be considered in connection with his giving up that bruto simply in order to understand the posture, the present posture of the case with the interests of the people involved.

The Court: Judge, I don't want to pursue this part of it further, but that argument would cut both ways and I am sure your adversary would say immediately based upon some contentions he makes in his brief that if the $16,000 were paid in connection with this joint venture and if the agreement was alive at the time, why didn't the plaintiff afford the 25 per cent of the $16,000.

Mr. Voorhis: They weren't asked to.

The Court: They knew the obligation.

Mr. Voorhis: At no time—they didn't even (45) know—

Excerpts From Transcript

The Court: Let's not carry this too—

Mr. Voorhis: They didn't know—

The Court: You are getting into an argument you might address to the trier of the fact. I am simply saying to you when you place such emphasis on this it opens the door on other items and I think there is undue emphasis on that. How much longer will you be now?

* * *

(47) Mr. Nizer: May it please your Honor.

* * *

(60) Mr. Nizer: Yes, sir.

"Turn up" relates back to the letters which were exchanged originally with Galic and the others. If through his services and intervention, is the language, concessions are obtained, then he is entitled to this override, and that meant the legal processes by which representatives create good will, give ideas for geologists, give ideas for preferences, visit all the ministers to describe the responsibility of an independent company who is not known as Standard Oil was, and so on, and we did engage people to do that, your Honor, who were very responsible and had (61) to overcome the disrepute of General DeRovin and Galic and for that matter the Ogbi situation.

Now, they even pleaded that definition that I give your Honor in Paragraph 6 of the complaint. The defendant utilized the intervention and services—that's the language—of the said Ferdinand Galic on behalf of the said joint venture and the said Ferdinand Galic turned up—they had to equate turned up with that definition.

* * *

(64) Just a few words about the Kabazi matter.

Your Honor, we contend, as your Honor has seen from our brief, that the Kabazi letter is rank hearsay, (65) aside from its spurious nature which I will only touch

upon because that will require development by experts. The man Rudolpho, is it? Rudolpho—that they refer to as a new expert is simply one man, one executive from the Olivetti which fills in another bit of evidence to show that this was not written on an Olivetti typewriter and is false, and is a spurious document dated February 16th—

The Court: Spurious? In what sense do you mean spurious?

Mr. Nizer: It was prepared in 1967 for the lawsuit and dated back to the time of the event and we can demonstrate in many ways. Now let me indicate just a few of the ways in which we can demonstrate it, although we are going to object—

The Court: Well, the award was made in February 1966 and the contracts were entered into in March 1966. (66) Mr. Nizer: Correct, sir.

The Court: It is your contention that this letter was written in 1967?

Mr. Nizer: That's right, written later and dated back, and there is so much internal evidence of that in addition to expert testimony of the highest character. I may say to your Honor in view of what I thought was an attempt of some coloration here, that whenever they asked for an original document we just gave it to them and said return it when you are through and we give them some. We asked for this original, they wouldn't give it to us, we had a long contest, the Court granted it to us, appointed their own expert they were not content with Mr. Haring's report, they then engaged two other people by the names of Teitel to hear what they deemed a contradictory report to the Court-appointed one, and unfortunately Haring was in a very serious accident, and is incapable of coming to court or testifying, so we had to get somebody else and that is why we have Hilton, but just to give your Honor a glimpse without going into it on an opening statement, to give you a glimpse of

this situation, the background here is that Kabazi in a deposition, which I hope will be kept out, but it has been referred to, I must reply subject to my motion, claimed that he wrote this on official stationery, (67) but he knew it was a great secret, he shouldn't have done it, it violated the Libyan law.

He mustn't tip off anybody who was going to win, so he destroyed even the carbon, he was afraid someone would pick up the carbon and read what he had written, all that was between him and Galic was destroyed instantly, he said.

Fortunately, your Honor, they took the deposition of Galic and we, through one of those strokes of luck which help reveal the truth, obtained a series of letters which Galic had written to deRovin and he didn't know we had them, and when we faced him to contradict his testimony with his own letters, which your Honor will see, he kept saying, well, I lied. I lied. That was about a loan, he said, and in order to extricate himself from dozens and dozens of such statements, no, that wasn't the truth, I lied, he invented the story that he did it to fool DeRovin, but there were so many things that couldn't have fooled DeRovin it had nothing to do with it.

H related in a letter to Mr. Allen that Kabazi wouldn't look at him, wouldn't see him, when he claims to have this great friendship, after the concession is granted he writes to the Allens, I don't know who was responsible (68) for this, but if it is the last thing I do I am going to find out. He is the man who was responsible for this.

The Court: I don't know who was responsible for what?

Mr. Nizer: For getting the concessions. He claims he did it through his efforts, your Honor.

Now, in this background, the Kabazi letter of February 16 over which there is this contest and before it is admitted I take it your Honor will listen to experts on both sides, type according to him in triplicate, and he

gives the date on February 16, 1966, in another part of his deposition. He concedes that during that period and for a whole month about, he was in Bada, 700 miles away. He says that he always communicated—this letter was sent to Galic—he always communicated with them in French or Italian, never in English. This letter is written in English, this one letter. A mere reading of the letter, incidentally, compared with Kabazi's English when he testified shows this letter was prepared by someone else. It is very good English, perfectly designed to suit the purpose. It is also perfectly aligned, he couldn't have typed anything like this.

And when we find now that the paper wasn't the (69) same as was used at the time in '66, when he claimed he wrote this, the crest is out of order, when we find that the Olivetti typewriter which he claimed he lost, he gave it to a friend in Italy, he hasn't got it any more, but when we find out it wasn't written on an Olivetti typewriter and that will be conclusively established, we have a right, in addition to many other things, to challenge that document. But it wouldn't matter even if it were in.

• • •

(77) CHARLES ALLEN, JR., called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. Van Voorhis:

Q. Mr. Allen, you are a member of the firm of Allen & Company, plaintiff in this action? A. Yes.

Q. Will you tell us very briefly about the type of business in which the partnership is engaged? A. Investment and trading, chiefly for our own account.

Mr. Nizer: I can't hear, your Honor.

Q. Please keep your voice up. A. Investments and trading chiefly for our own account.

Q. You are one of the managing partners, are you? A. I am.

Q. And the other one is? A. Herbert Allen, Sr.

Q. For how long has Allen & Company, partnership (78) or corporation, been operating? A. A partnership, 51 years.

Q. And the corporation, I take it, is engaged in a portion of what was formerly the business conducted entirely by the partnership? A. No. The corporation took over the underwriting, the mergers, the advisory business.

Q. That was the new business that came in after the formation of the corporation? By "took over," do you mean? A. We took over the underwriting—

Q. By "took over," do you mean the new underwritings were handled by it? A. All the underwritings except municipal bonds.

Q. Can you tell us very briefly something about the history and the standing of Allen & Company? A. I believe at that time we were third in the ranking in capital of the investment banking fraternity in the United States.

Q. At the time, you are referring to 1964, 1965? A. I think it was, or maybe 4 or 5. We were amongst the first ten and probably three, four or five.

Q. By at the time do you mean 1964 or 1965? A. That's correct.

(79) Q. Do you know a man named Ferdinand Galic? A. I do.

Q. For how many years have you known him? A. Maybe as much as 20 years.

Q. Did there come a time when you and he were in communication with respect to a Libyan oil project? A. Yes.

Q. Approximately when was that? A. The early spring of 1964.

Q. Tell us what occurred in that connection? A. Say that again?

Q. Tell us how that contact occurred and what was said? A. Well, Ferdinand Galic called me from, I believe, Paris to tell me that he had a chance to get some excellent oil concessions in Libya. He wanted to know whether or not we wanted to take them.

Mr. Nizer: Excuse me, sir. May I object on the ground this is hearsay between him and Galic and not binding on us?

The Court: I will take it subject to connection and subject to a motion to strike.

A. I told him I would talk it over with my brother Herbert and call him back.

(80) Q. What further, if anything, did he say to you in this conversation? A. He told me that he could get two excellent concessions, that he would give his assistance and he had associates that he would be working with and through.

Q. Did you thereafter have some conversation with your brother Herbert? A. Yes, I did.

Q. With reference to this matter? A. I discussed it with Herbert and—

Mr. Nizer: May I have a continuing objection?

The Court: Yes. This is clearly hearsay now and we ought to avoid it.

• • •

(81) Q. Just for the record, was there any conversation between the two of you as managing partners with reference to your firm's reaction to this inquiry by Galic? A. Yes. There is something I left out of the Galic conversation, if I might.

Q. You mean part of the conversation with Galic? A. Yes.

Q. All right. What was it?

Mr. Nizer: I object to that, your Honor.

Mr. Voorhis: We are back to Galic. He has already testified—

Mr. Nizer: That is objectionable too, not in our presence, not binding on us.

The Court: How would that be binding? I am taking it subject to connection, but it seems to me—

Mr. Van Voorhis: It is part of the history of the transaction, your Honor.

The Court: It seems to me if they had a conversation with Galic a very easy way to handle it is, if, subsequently there were conversations with whis witness or the other partner with the defendant, you could bring it out very easily without getting into all of the questions (82) of hearsay.

Mr. Van Voorhis: There definitely was.

Q. Did you after having this conversation with your brother Herbert again contact Mr. Galic? A. I did. I told Mr. Galic—

Mr. Nizer: Objection.

The Court: I will take it subject to a motion to strike.

A. I told Mr. Galic that Herbert had spoken to two companies that we were bankers for, Associated Oil and Gas and Occidental Petroleum, and that we thought that they would be two companies whose names we wanted to submit, and Mr. Galic said, "Well, can they—they would have to be able to take care of the oil and have to be able to show financial strength."

I told him that we would take care of all the finances and that we wanted—if we went into the deal, we were going to take one-third each way, that each of us was going to take a third.

This was the conversation I understood Herbert had with both companies.

Mr. Galic said that he was sure that due to his connections he could make the necessary arrangements so that he could get the concessions they wanted.

(83) Mr. Nizer: Move to strike all of it, your Honor, double hearsay.

The Court: Mr. Nizer, didn't you understand I said I am taking it subject to a motion to strike at the end of the plaintiff's case. I am taking it subject to connection.

I think you ought to bear in mind also that I am sitting without a jury as the trier of the fact and eventually I will only consider evidence that is admissible and relevant.

In a non-jury case I take a great deal of testimony that under the rules I would not admit before a jury.

Q. I show you Plaintiff's Exhibit P27, a letter dated August 28, 1964. Did you receive that letter? A. Yes, I did.

Q. It is signed by Ferdinand Galic? A. That's correct.

Mr. Van Voorhis: This I offer in evidence.

Mr. Nizer: Objection, your Honor, on two grounds. First, that it is not written by the defendant or its representative, and no copy to us, and secondly, it refers to an attached letter and there is no attached letter.

Mr. Van Voorhis: We consider that this is part (84) of the entire transaction. It is more than mere hearsay. We will connect it up as we go along.

The Court: I will take it subject to connection, but it is clearly not binding on the defendant at this point.

Where is the attachment to which it refers? Under the doctrine of completeness, if you have

any basis for offering it, you should offer the entire document.

Mr. Van Voorhis: May I see it?

The Court: Yes. It refers to "attached letter."

Q. I show you Exhibit P28 and ask you whether that is the attached letter referred to in this P27. A. That is.

Q. It was received by you with that? A. They were both received together.

Mr. Van Voorhis: I further offer P28 in evidence.

Mr. Nizer: Your Honor, counsel is obviously inadvertently in error. The letter he offers was attached to another letter, August 29, from Galic to Charles Allen, "My Dear Charles." It is attached to that letter, but it is not the attachment which is referred to in P27.

Mr. Van Voorhis: All right. For the time (85) being I will withdraw the offer of 28 and we will check that.

I offer P29, however.

Mr. Nizer: Are you withdrawing P27? I didn't understand, Judge.

Mr. Van Voorhis: I said just for the moment, in order to verify the paper referred to in the—

Mr. Nizer: Which are you offering, P27 or P28?

The Court: You are talking at cross purposes and the reporter apparently isn't getting the sequence as far as these exhibits are concerned.

You offered—is this correct, so we will have the record right—a letter of August 29, 1964, sent by Ferdinand Galic to—it is just addressed "Dear Charlie." I take it it is addressed to one of the plaintiffs. Is that right?

Mr. Van Voorhis: That's right.

The Court: You have withdrawn a proposed exhibit which presumably was the attached letter that is referred to—

Mr. Van Voorhis: No, no. The August 29th I am offering. The other one, the one that you just referred to of August 28, I want to check it to make sure (86) that the 29th is—

The Court: That is what I was about to say, that all you are offering so far as Plaintiff's Exhibit 27 and you haven't decided yet what the attachment is. Is that it?

Mr. Van Voorhis: I think 27 is the number of that August 29th. No, it is P27 that I want to verify. The other one I am offering right now.

The Court: When you say you are offering right now, is that P28 that you are offering right now?

Mr. Van Voorhis: It is the August 29th letter.

The Court: That is Plaintiff's Exhibit 28 for identification. You are offering that one?

Mr. Van Voorhis: Right.

The Court: All right. You withdrew P27.

Mr. Van Voorhis: Temporarily.

The Court: Is that right now?

Mr. Van Voorhis: Correct.

Mr. Nizer: I take it my objection is recorded subject to your Honor's ruling that you will accept it perhaps?

The Court: Not perhaps. I said we are receiving it subject to a motion to strike, which means also subject to connection.

(87) (Plaintiff's Exhibit 28 was received in evidence.)

Q. To clarify this—

The Court: You have offered it in evidence. I want to read read it. I take it you have offered it in evidence as part of your case. I would like to read it.

Mr. Van Voorhis: Yes.

Charles Allen, Jr., for Plaintiff, Direct

Q. Mr. Allen, with regard to P27, I believe you testified that P27 enclosed P28. A. That is correct.
Q. Is that right? A. That is correct.

Mr. Van Voorhis: I now reoffer P27.
The Court: Received on the same basis.
(Plaintiff's Exhibit 27 was received in evidence.)
The Court: Now just hold it a moment, please.

Q. The Mr. Brenner who is referred to in this correspondence, is he an officer or employee of Occidental, or don't you know? A. I don't know.

Mr. Van Voorhis: I think it is so stipulated in the facts.
(88) Mr. Nizer: Who is this, please?
Mr. Van Voorhis: Brenner.

Q. Did you have any further conversations with regard to this subject with Mr. Galic prior to September 1964? A. Yes, conversations throughout the summer.
Q. Will you tell us as nearly as you can the time and the place and substance of them? A. I really have no record—

The Court: You have to raise your voice. Everybody in the courtroom is supposed to hear you. I am having difficulty and I am sitting close by.

A. I would say this went on during the summer. I can't pinpoint any dates. All I know is that we discussed Mr. Galic and Mr. Galic's workings and he was telling me that he was going to get together a lot of different people and so forth for a meeting later on in London.
Q. Was anything said with reference to a trip to Libya? A. Yes. He said that—
Q. To be made by Galic or some of his associates? A. He contemplated that he would make a trip to Libya or some of his associates would make a trip to Libya to further this.

(89) Q. And as to whether or not he would be accompanied by someone from Occidental? A. He stated that they had gotten in touch with Occidental. I don't know just who it was, but Occidental had been brought into the picture almost immediately by Mr. Galic.

Q. I show you this letter dated September 7, 1964, designated P32. Did you receive that letter? A. Yes.

Q. Is that the signature of Ferdinand Galic? A. That is.

Mr. Van Voorhis: I offer that in evidence.

Mr. Nizer: I object to this on the additional ground, in addition to those previously stated, that it is obviously self-serving and irrelevant to this controversy. I of course understand your Honor's ruling. I am merely making my additional objection.

Q. Now—

The Court: You know, you offered these in evidence. I am receiving them. I would like to read them. Won't you give me a chance to read them, please?

Mr. Van Voorhis: I am sorry, your Honor.

(Plaintiff's Exhibit 32 received in evidence.)

(90) The Court: All right. Proceed, please.

Q. Proceeding to September 1964, I take it you did not attend the meeting in London which you said Mr. Galic was planning to arrange? A. I did not.

Q. That was attended by your brother Herbert? A. By Herbert, yes.

Q. While Herbert was in London at that time—and I refer to September 16 to 18 of 1964—did you have an overseas telephone call from your brother Herbert? A. Yes.

Q. Will you tell us what was said by you and him in that connection? A. Well, Herbert mentioned—

Mr. Nizer: Same objection.

The Court: Aren't we going far afield with conversation between the two plaintiffs? How is that possibly binding on the defendant here?

Mr. VanVoorhis: Only this, your Honor. The partner Herbert Allen was in London.

The Court: He was there. He can testify as to what happened. This is hearsay.

Mr. VanVoorhis: He was there and he can testify (91) as to what happened.

The Court: I am adopting a very liberal attitude with respect to receipt of evidence, but there is a limit beyond which I won't go. I am not going to accept a conversation between the two partners reporting on a session or a meeting that was had at which it is alleged representatives of the defendants were.

You have the partner here to testify. You have direct evidence. Why do we get into this?

Mr. VanVoorhis: I only offer the—

The Court: We are spending needless time on that. I will adopt a very liberal approach. I am receiving all this in evidence subject to connection only because I am sitting as a Judge without a jury. But there is a limit to the—

Mr. VanVoorhis: It was simply to show an authorization of both partners to make the arrangements which were made.

The Court: I would assume, since they are partners, one would have the same right as the other to make arrangements under partnership law.

Mr. VanVoorhis: I think your Honor is correct with respect to that and I will not pursue this further.

Q. Following this 16 to 18 September 1964, did you (92) have any further communications with Mr. Galic in regard to this subject? A. When did you say?

Q. Following the 18th of September until March of 1965. A. I believe so.

Q. I show you Exhibit P51 and ask you if you received that telegram. A. Yes, I did.

Q. Addressed to you? A. Yes.

Q. And signed Ferdo? A. That is Ferdinand Galic, yes.

Mr. VanVoorhis: I offer that in evidence.

Mr. Nizer: Objection. We never received it. Unless your Honor wishes the old ruling to apply to this one, I understand.

The Court: I will receive it under the same ruling, and so that there won't be any misapprehension on the part of any of the parties, it is certainly not proof of the facts contained therein. There are many self-serving statements contained in the exhibits thus far received. The eventual evaluation as to whether or not events occurred (93) will depend upon the totality of evidence in the case.

(Plaintiff's Exhibit P51 was received in evidence.)

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(94) Q. Mr. Allen, did you testify as to conversations or communications had between you and Galic subsequent to September and until March 1965? A. I did.

Q. What did he tell you in those conversations? A. The conversations with Galic?

Q. Yes. A. From the original ones?

Q. After September until March 1965. A. September—

Q. With reference to whatever his activities and yours may have been in connection with this. A. Well, our activities, with the exception—our activities more or less ceased, because what we did is we turned Mr. Hammer

over to Mr. Galic and from there on they made their arrangements, they hired, they fired, did everything themselves.

Q. Did Mr. Galic tell you— A. As far as Mr. Galic goes, we advised him at all (94a) times to cooperate with Mr. Hammer.

Q. Did Mr. Galic report to you on any of his visits to Libya? A. He may have. I don't recall at this time (95) Q. Coming to March— A. Wait. May I correct that?

Q. Yes. A. In one telegram he sent me he stated that he had real success from Libya.

Q. Things were going well? A. Yes.

Q. The telegram you are referring to that I just put in evidence? A. That's right.

Q. Now we come to March, 1965. I show you Exhibit P66, a letter dated December 2, 1964, and ask you if that is the signature of Ferdinand Galic? A. That is.

Q. Did you receive that? A. I did.

Mr. VanVoorhis: This I offer in evidence.

Mr. Nizer: I object to this, your Honor, on grounds previously stated. In addition, there are self-serving declarations there and we never got a copy of this letter. Galic's designation for the purpose described in the previous exhibit does not make him an agent to bind us in conversations with Mr. Allen in any way. He was not an agent at all; he was a contractor who was to (96) do a special job, just like others, as an independent contractor and until it is established that he had this kind of authority particularly in writing, which we never got a copy of, to his friend, we are not bound by his self-serving declarations.

Mr. VanVoorhis: Allen's financial backing was vital to this picture.

The Court: I will receive it subject to a motion to strike.

(Plaintiff's Exhibit P66 received in evidence.)

Q. I show you Exhibit P79, a letter dated January 22, 1965. Is that signed by Ferdinand Galic? A. That is.

Q. Annexed to it is a copy of what purports to be a letter to Dr. Hammer from Ferdo Galic dated January 22, 1965? A. That is correct.

Q. Was that enclosed with the P79? A. Yes, it was.

* * *

(97) By Mr. VanVoorhis:

Q. I show you a letter dated March 16, 1965, marked P97, with an annexed document. This letter purports to be signed by your brother Herbert, is that correct? A. That's correct.

Q. Addressed to Dr. Armand Hammer? A. That's right.

Q. And the memorandum enclosed or annexed to it is entitled, "Summary of miscellaneous information on one General DeRovin," is that correct? A. That's correct.

Mr. VanVoorhis: If your Honor please, while (98) I am not going to press the point if you sustain an objection to it, it seems to me that conversations on this subject are policy between the two brothers, who are the managing partners of Allen & Company, with reference to what to do with this report, and that is relevant.

The Court: I don't know what has been offered yet. I have not seen anything.

Mr. VanVoorhis: I will offer it in evidence.

Mr. Nizer: There is no objection, your Honor. This has been stipulated in.

(Pause.)

The Court: It is received without objection.
(Plaintiff's Exhibit P97 received in evidence.)

Q. Mr. Allen, after receiving this DeRovin report, which was attached to that letter, and before the letter of your brother Herbert to Armand Hammer was mailed, did you have some discussion with your brother Herbert with reference to the sending of this to Dr. Hammer? A. Yes.

Q. As managing partners of the firm? A. Yes, we did.

Mr. Nizer: I respectfully object to any conversation.

The Court: I will receive it for whatever value (99) it has.

A. We were quite surprised at getting it and we talked it over and decided that as long as we were partners with Occidental we should send it on to Dr. Hammer immediately, which we did. We didn't judge whether it was true or untrue, that was not up to us.

Mr. Nizer: I move to strike—

The Court: Strike the latter part of the answer.

Q. Did you make any independent investigation— A. We did not.

Q. —to ascertain the truth of the facts stated in that memorandum? A. No, we did not.

Q. Did you have any communication from Occidental or from Dr. Hammer following the mailing of that letter? A. None whatsoever.

Q. Until when? A. Until, I believe, some time in August.

Q. To refresh your recollection, may I refer you to a letter bearing date July 16th— A. That was a letter we received from —this was the letter sent to Herbert Allen on July 16th concerning the venture with Occidental.

(100) Q. It was written, I suppose, to your firm? A. A. Yes.

Q. You saw the letter when it arrived? A. Yes, I did.

Q. Did you notice, there are annexed to it two telegrams? A. Yes.

Q. One purporting to be addressed to Ferdo Galic and the other to General DeRovin? A. That's right.

Q. And that is the signature of Armand Hammer (indicating)? A. Yes.

• • •

(101) Q. Did you discuss this letter of July 16, 1965. Exhibit P124 with your brother Herbert and counsel? A. Yes. I got together with Herbert—

Mr. Nizer: Objection to the conversation, sir.

Mr. VanVoorhis: At the moment I am just asking if he discussed it.

A. Yes.

Q. Who was present at this conversation? A. Herbert and Jimmy Deer.

Q. Will you tell us what was said on this occasion?

Mr. Nizer: Objection, sir.

Mr. VanVoorhis: Well, we propose to show that action on advice of counsel here—

Q. Who is Mr. Deer? A. He is our counsel.

The Court: Would it be the objective fact that (102) is important here? I will take it. So there won't be any misapprehension about it, I am raising a question about it. Suppose he did act on the advice of counsel, how does that alter the rights of the parties involved or affect the rights of the parties involved?

Mr. VanVoorhis: In this way: The fact that there was no written communication for some time

from the Allens, or Allen & Company to Occidental in response to this letter of July 16th is treated as acquiescence. Counsel for Occidental has argued that the fact that they did not reply in writing to that letter was an acquiecsence in the cancellation of their joint venture.

It seems to me that where such a point as that is made that it is relevant to indicate the circumstances, the mental operations. Acquiescence is a subjective thing as well as objective, at times, and I think we are entitled to show the state of mind.

The Court: Do you want to be heard?

Mr. Nizer: Yes. It is not the best evidence. If counsel wishes to testify, it still may not be admissible, but at least that would be one step nearer the source, but for him to say that he had a conversation in which he got advice from his lawyer, which is irrelevant and immaterial, in any event, the operative fact, as your (103) Honor commented, is an answer to that. This is clearly inadmissible. It is hearsay between the plaintiff and his own brother and his own lawyer with respect to alleged advice they got and never communicated to us.

I object to it.

The Court: Well, I will receive it, for whatever value it has, in explanation for the failure of the plaintiffs to respond to this letter, as you contend, as I recall from your opening statement, for a period of 18 months, is that correct?

Mr. Nizer: Yes, your Honor.

Q. You may answer. A. We took it up with our counsel, who told us—

Q. What was your discussion, and tell us as near as you can whatever was said between the three of you.

A. We gave him the letter, to see whether the letter meant anything, whether it was binding. He said that it was completely meaningless, it was a self-declaring letter and had no meaning at all.

Q. Did your brother say anything to you and to Mr. Deer with reference to it? A. He said it's like divorcing your wife by sending her a telegram, "You are divorced." I think Mr. Deer said it was unilateral.

(104) Q. Were there any further comments that you recall were made with relation to the letter? A. The only further comments were that we were going to tell Mr. Hammer as soon as we got to him.

Q. That is the most that you recall at the present time? A. What is that?

Q. That is the most that you recall at the present time, is it? A. You mean as far as the letter—

Q. As far as what your brother said as to the conversation. A. That was the conversation with our attorney, all I can recall at the present time.

Q. And with Herbert? A. And with Herbert, yes.

* * *

Q. Was anything said by Mr. Deer with respect to whether there was any legal necessity of answering it? (105) A. Mr. Deer said there was no need to answer it.

Q. Going back just a little, on receiving this DeRovin report, P97, did you have any conversation with Galie about it? A. I don't recall.

Mr. Nizer: Objection, sir.

Mr. VanVoorhis: He says he doesn't recall.

Q. Did you have any discussion with Galie about this letter of July 16, 1965? A. Yes.

Q. Which is Exhibit P124? A. Yes.

Mr. Nizer: Excuse me. Your Honor, may I ask that the telegram, copy of a telegram, which is referred to in P97, the annexed sheets, if your

Honor has it before you, March 12, 1965, enclosed text of information regarding Mr. Pogulu alias General DeRovin, and a copy of telegram sent to him on March 8th in agreement with Charles Torum—may I have that telegram, so it is a complete document?

The Court: We are going back to 97?

Mr. Nizer: He just asked another question about it and I regret I didn't mention it sooner.

The Court: You are referring to the reference on the second page of that exhibit?

(106) Mr. Nizer: Yes.

The Court: Enclosed text of the note of information regarding Mr. Pogulu alias General DeRovin.

Mr. Nizer: That's right.

The Court: And copy of the telegram sent to him on March 8th?

Mr. Nizer: Yes.

The Court: Where is that? I take it Mr. Nizer is correct about that, that it should be a complete document. Where is the telegram?

Mr. Greenspoon: Your Honor, may I respond to that?

The Court: Mr. Greenspoon, I am going to have one lawyer at a time in this case. Otherwise the time estimate will run much beyond what was given to the court.

Mr. Greenspoon: I think I can be quicker on it because I am a little more familiar with it.

The Court: All right.

Mr. Greenspoon: So far as we know, we did not receive the telegram referred to from Klehe to Carton. We did get it several years later. We asked Klehe for a copy of it and we got it.

The Court: Who is Klehe?

Mr. Greenspoon: A French banking house.

(107) The Court: The bank the plaintiff has some interest in?

Mr. Greenspoon: Had at that time, your Honor, a small interest.

The Court: An interest? Is that the bank?

Mr. Greenspoon: Yes.

The Court: Whether you received it later or not, are you agreed that is the telegram referred to? If so, let's not spend time on it and consider it part of that exhibit.

Mr. Greenspoon: We don't have any objection. We don't know whether it was the right telegram or not.

Mr. VanVoorhis: We are not going to object to it, if Mr. Nizer wants it in.

The Court: Can this be clarified? Where is the telegram sent to him on March 8th in agreement with Mr. Charles Torum? Weren't there any witnesses questioned on the depositions in the thousands of pages taken?

Mr. Greenspoon: Yes.

Mr. Nizer: Yes, sir.

Mr. Greenspoon: No one could identify it.

Mr. Nizer: And he said—

The Court: Who is he?

(108) Mr. Nizer: Allen and counsel said they didn't have it, and this telegram, it was conceded on the deposition that Torum is the attorney, and here is a lawyer writing with respect to this matter and it is supposed to be attached to this letter and it is missing. Then they give us recently cables which we don't think relate to that or are the cable involved, and we have always objected to this cable being missing, the one document which shows what their own lawyer said about DeRovin, apparently.

Mr. VanVoorhis: This is the best we could do, your Honor.

The Court: If it isn't here, I can't supply it.

Mr. Greenspoon: We supplied something, telling them this is what Klehe gave us several years later.

Mr. VanVoorhis: 97 was received by Mr. Nizer's consent.

The Court: Mr. Nizer, if you think it is important to establish the contents of the telegram referred to on page 2 of Exhibit 97 during the course of this trial, if you desire to take the deposition of any witness on the subject you will be permited to do so, even though all depositions are closed.

Mr. Nizer: To be brief and not hold up the matter (109) now, I would like at least to have marked the document which counsel did give us stating that he is not sure whether this is the annexed cable, and I would like that to be marked in the meantime, with that reservation.

Mr. VanVoorhis: We have no objection to that.

Mr. Nizer: It is 57.

The Court: How is that to be marked as part of Plaintiff's Exhibit 97?

Mr. Nizer: As their representation that they don't know but they believe that is—

The Court: It will be received anyway. We will mark it 97A.

(Plaintiff's Exhibit P97A received in evidence.)

By Mr. VanVoorhis:

Q. Mr. Allen, you were about to tell us what conversations, if any, you had with Galic with respect to this letter, P124, of July 16, 1965.

Mr. Nizer: Objection.

The Court: It will be received subject to a motion to strike but, frankly, I must say to you, while I have taken the conversation that was had by the witness and his brother with their attorney, I don't know how any conversation with respect to Galic can affect the rights of the parties at this point. I will take it.

• • •

(110) The Court: I think you were about to ask him the question: Following the receipt of this letter of July 16th, did there come a time when you did have a conversation with Dr. Hammer of Occidental?

The Witness: Yes.

The Court: With respect to the subject matter of that letter?

The Witness: Yes.

The Court: Who was present on that occasion?

(111) The Witness: Mr. Benehan, Dr. Hammer and myself.

The Court: Who is Mr. Benehan?

The Witness: He is dead now. He was an associate of Klehe & Company.

The Court: Where did the conversation take place?

The Witness: At Mr. Hammer's home in Greenwich Village. At that time I told him—

The Court: You have not fixed the date of the conversation.

The Witness: August, 1965. Previous to that, we were working on a phosphate deal in Morocco.

By Mr. VanVoorhis:

Q. By "we," you mean you and Occidental? A. Ted Benehan, representing Klehe and Company, and Hammer, and they brought it to Hammer. This meeting was more for the purpose of discussing the phosphates, but at that

time—in the meantime, the telegram had come in and I started the conversation off with Mr. Hammer telling him exactly what our attorney told us about the telegram.

(112) The Court: Don't tell me that. When you say that you are not telling me what was said on that occasion.

The Witness: The telegram had no bearing whatsoever.

Q. You are talking about the letter of July 16? A. Yes, the letter.

Q. Enclosing telegram to DeRovin and Galic, is that correct? A. That's correct. We had quite a bit of trouble with Galic. We had told Galic to continue on doing everything he had, that our attorney said there is no meaning to the telegram. When we sat down with Dr. Hammer the question of phosphates came up. We had introduced him to Klehe, they were about to close something in Morrocco. We didn't want any part of it because of this eruption we had with Dr. Hammer and we told him that we would not proceed in Morocco at all, that Morocco would not proceed without us with Dr. Hammer unless he understood this other matter that we continued to work and the contract was still in force and he acquiesced to it.

The Court: When you say he acquiesced in it, what did he say? I asked what the conversation was.

The Witness: He told us to go right ahead. (113) I told him about the trouble with Galic and so forth. He told us to go right ahead just as you have been doing.

Q. I don't quite recall, did you say in what you just are saying now, that you told Dr. Hammer the remark of your counsel? A. I told him the remark of our counsel and he thought it was meaningless and he asked us to continue working, to do exactly as we had been doing.

Q. Did you have a conversation with Galic or Hammer at or about this time with respect to a motion picture? A. Yes. I told Mr. Hammer because Dr. Hammer at that time—because Ferdo Galic told me between the interval of the letter of the cancellation—

Q. What did you tell Dr. Hammer at this time that Ferdo Galic had said with regard to this Libyan motion picture? A. Ferdo said that one of the important things in Libya was public relations and he was making a picture on Libya which he was paying for just to cement the public relations with Libya due to our joint venture.

Q. Did they say who wrote the script for the movie? A. I don't recall that.

Q. Was anything further said at this time about (114) this movie? A. Well, except the movie was going to cost them around $100,000 plus, and he was laying out money for it.

Q. I show you Exhibit P126. A. Yes.

Q. According to the telegram, to Dr. Hammer, from Ferdinand Galic—

> Mr. Nizer: Can't hear you. What number is that please?
>
> Mr. VanVoorhis: 126 to Dr. Hammer, from Ferdinand Galic. And I ask you did you receive that?

The Witness: I did, yes.

Q. How did you receive it, what was the occasion for it? A. I imagine it was mailed, I don't know. I don't know who mailed it to me. I imagine it was mailed to me by—I can't recall.

Q. Was it received in the mail? A. It was received in the mail, yes.

> Mr. VanVoorhis: It purports, your Honor, to be a copy of a telegram sent by Galic to Dr. Hammer,

received in the mail. I ask the defendant if they have the original of this.

Mr. Greenspoon: They have authenticated this.

(115) Mr. VanVoorhis: My associate tells me this is already authenticated. I offer it in evidence.

Q. I show you a letter dated October 13—

Mr. Nizer: Just a moment, please. I am checking the pretrial order. It was offered solely for the limited purpose of communication. I am trying to find that number. It has been translated into another number.

Mr. Greenspoon: We will give it to you right now.

Mr. VanVoorhis: Galic had been adopted as your man by this time.

Mr. Nizer: Oh, yes, of course I move to strike out counsel's observation. But your Honor may we pass this—

The Court: Do you really have to move to strike it out? You didn't have a jury sitting in that box, do you?

Mr. Greenspoon: It is 18, Mr. Nizer.

Mr. Nizer: May we pass this for the moment and come back to it not to hold up your Honor? It is just a matter of translating the numbers. They have all been given different numbers.

Mr. VanVoorhis: I don't mind.

Q. I show you a letter dated October 13, 1965, (116) Exhibit P141, addressed to Dear Herbert—I suppose Herbert Allen? A. Yes.

Q. Is that signed by Ferdinand Galic? A. It is.

Mr. VanVoorhis: I offer that in evidence.

Mr. Nizer: This letter was never given to us. It is after the termination.

The Court: I am going to say, Judge VanVoorhis I am receiving the other communications, that is, between the plaintiffs and Mr. Galic subject to not only this motion to strike but I may eventually leave it in under my theory that since I am sitting without a jury, eventually I will only consider evidence that is relevant and material and admissible. But you are now offering a letter subsequent to July 1965, where the defendant contended, under which defendant contended there was no longer any relationship between the defendant and Mr. Galic. In fact Mr. Galic wrote an answer protesting against the cancellation of contract. How do you purport to have any evidentiary value to the statements contained herein? I haven't read it. I am about to read it. But I am suggesting to you this is going quite far afield. This letter writing must (117) reach an end at some point where each is expressing his own position and own point of view and making selfserving statements.

Mr. VanVoorhis: I think when your Honor reads the letter that you will perceive the reason on account of which it is offered.

The Court: Well, it is interesting. It is much better to have always the same driver especially for Rolls Royce. But what I don't see what that has to do with this case.

Mr. VanVoorhis: That is a discursive remark that precedes the relevant part of it later.

The Court: And on the other hand, Mr. Nizer, I don't know in the light of your opening statement why you are objecting to this letter.

Mr. Nizer: I know there are--

The Court: Didn't you make a statement this morning in your opening statement while Mr.—I have to get his name right—Mr. Galic, once you

sent a letter, after your client sent the letter in July 1965, that Mr. Galic took great pride in saying that "I blocked the way"?

Mr. Nizer: Yes.

The Court: And isn't that contained in this letter?

(118) Mr. Nizer: Yes.

The Court: Why do you want it out of this case?

Mr. Nizer: We have that evidence anyhow, your Honor, in another letter, but the reason I object to it, sir, is that even though it serves our purpose in some respects, the danger of this kind of series of communications between the two friends is that if I become selective and say, "Well, I like this," that other evidence will get in where they were plotting, as I believe, with respect to this matter, between them.

The Court: Oh, I think what you referred to as a danger obviously must be at a minimum in a case being tried in a court without a jury. Don't you give the Court credit for the capacity to distinguish what is relevant, significant, material and admissible evidence?

Mr. Nizer: All right.

The Court: Everybody is writing everybody else in this case.

Mr. VanVoorhis: In that connection, your Honor, I offer P131.

The Court: It will be received on the same basis.

• • •

(119) (Plaintiff's Exhibits 141 and P131 received in evidence.)

The Court: This is what we used to refer to as a claim letter, a man asserting a claim that he addressed to an opposing side. It will be received in evidence.

As a matter of fact, it incorporates two exhibits in evidence already, the letter of July 16, 1965, sent by Occidental and the returned cablegram, I think it is by Mr. Galic, of July 27. They are already in evidence. He reiterates his position that he will pursue you further, in the United States, the Continent and the whole world.

I think you gentlemen, the lawyers I am talking to, ought to have a sense of balance in trying a case of this kind. I don't think there ought to be any undue apprehension, if any apprehension at all, on the capacity of the Court to distill all these communications and come down (120) to the essential issues in the case which were outlined this morning.

By Mr. VanVoorhis:

Q. Now, Mr. Allen, referring to this Exhibit of October 10, 1965—

Mr. Greenspoon: October 13.

Q. —Exhibit 141, October 13, the blocking letter as we call it, for identification, was that followed by any conversation between you and Galic? A. Yes. I called up Mr. Galic—

Mr. Nizer: Objection, sir.

A. I asked him to continue—

Mr. Nizer: I objected to that.
The Court: I will hear the answer.

A. I asked him to continue as he was, we had asserted our partnership with Dr. Hammer and he had not objected to it, so he should continue right along.

Q. Did you ask him about what if anything he had done by way of blocking the matter? A. No, I did not. I knew he was capable of it, but I didn't ask him.

Q. Did he tell you as to—Mr. Galic's English is sometimes a little obscure—did he tell you at all whether or not he already had or was just planning to block the thing. (121) A. No, he hadn't done anything.

Q. He said he had not as yet done anything? A. He hadn't done anything.

Q. Now, did you have any communication about this with Dr. Hammer? A. I believe we did.

Q. At or about this time? A. I believe we did.

Mr. Nizer: What time, please, what date?

Mr. VanVoorhis: It is around the middle of October of '65.

The Court: Well, you fixed the date, the witness didn't at all. I must ask you to refrain from fixing the date or suggesting a date to a witness. Let him testify.

Mr. VanVoorhis: No, your Honor, the date was fixed—

The Court: Will you please let me finish my statement. There are leading questions asked. But certainly at this aspect of the case there ought to be non-leading questions.

Mr. VanVoorhis: I assume the date was fixed by the letter which I asked about. I thought that was what (122) Mr. Nizer was asking me for.

Mr. Nizer: Well, I meant for the witness to tell us when and where.

Mr. VanVoorhis: All right.

* * *

Q. I show you again Exhibit P141 and refer you to your testimony as to your conversation following the receipt of that letter with Ferdinand Galic. Can you tell us approximately when that conversation took place? A. Right after receiving the letter, some time, probably late October or the latter part of October.

Charles Allen, Jr., for Plaintiff, Direct

Q. Now, did you have some talk, telephone conversation, at or about this time with Dr. Hammer? A. I think we had a telephone conversation from Dr. Hammer setting up some date, but I don't recall exactly what it was. I know a date was set up in November, early November, and I believe we received a telegram from Dr. Hammer from Florida explaining it.

Q. I show you Exhibit P146 and ask you if that is the telegram. (123) A. Yes, that's the telegram.

Mr. VanVoorhis: I offer it in evidence.

Q. In that context, did you receive this letter dated November 3, 1965, Exhibit P147 purporting to be signed by Dr. Hammer?

(Plaintiff's Exhibit 146 was received in evidence.)

A. We must have received it, but I have no—

The Court: I didn't hear the balance of the answer.

A. I have no recollection at the minute.

Mr. Nizer: I can't hear that.

The Witness: I say we must have received it, but I have no real recollection of it I think.

Q. It came out of your file? A. It did come out of our file?

Q. I am asking you that. A. Oh, yes. Yes.

Q. Is that the signature of Dr. Hammer? A. As far as I know.

Q. Well, you have had plenty of opportunity to observe—

The Court: Is this referred to in the pretrial order? Is there any issue brought as to the authenticity (124) of this letter?

Mr. Nizer: That refers to another matter entirely. As it shows it is a Moroccan venture on phosphate.

We don't dispute the authenticity of the signature and that it was sent to us.

The Court: You object to it on the ground that it is not relevant or germane to the issues in this case?

Mr. Nizer: That's right.

The Court: What difference does it make if I receive it.

Mr. Nizer: He is trying to create a date and for this—

The Court: I understand. I assume there will be a witness testifying to this with respect to this on the other side, will there not?

Mr. Nizer: Yes.

The Court: Why are we spending time on this. I will acknowledge that you are correct it does not appear to be relevant to the issues in this case.

Mr. Nizer: I am sorry I didn't hear that, Judge.

The Court: I say strictly speaking you are (125) correct.

It does not appear to be relevant to the issues in this case.

Mr. Nizer: All right. Thank you.

• • •

(126) Q. Mr. Allen, we were speaking about this November meeting with Dr. Hammer, you recall? A. Yes.

Q. Did that meeting occur? A. Yes, it did.

Q. Can you tell us approximately when and where and who was present? A. I believe it was at our office. I am not sure of it, but I believe—

The Court: Mr. Allen, will you try and raise your voice?

A. I believe it was in our office, but I am not sure of that.

Q. That is at 30 Broad Street? A. Yes. And it was about the middle of November.

Q. Who was there? A. Dr. Hammer, Herbert and myself.

Q. Will you tell us what was the conversation, as nearly as you can recall in substance, who said what? A. The conversation had to do with the so-called blocking letter of Galic's and we told Dr. Hammer that we had told Mr. Galic not to—

Q. By "we," do you remember whether it was you or Herbert? (127) A. It was either Herbert or myself. I will say I told him.

Q. One or the other of you in the other's presence? A. That's correct. I told him not to block it, to go right ahead and continue cooperating with Dr. Hammer.

Then the phosphate thing came up again.

Q. Did Dr. Hammer say anything in response to that? A. Well, Dr. Hammer said that—he thanked us and said that he would handle it from there on.

Now, the phosphate matter came up because I received a call from the king's brother, Prince Moulay Abdullah of Morocco, and he stated that they were progressing and they were going to probably make a deal, but he wanted to know if—I told him that was fine and I was glad that Klehe and Dr. Hammer were going to do it. He said, "We don't want Klehe, we want you. We want you to take 25%, because this would be a guarantee for Morocco."

Then he told me that the king and he would be in New York around October 23rd and they wanted to get together with me at that time.

Mr. Nizer: Excuse me, sir. Is all this said to Dr. Hammer? I don't follow you.

The Court: Please go back and read the question and answer. You referred to a "he" and I am not sure that (128) I understand to whom you were referring.

The Witness: Well, I received a call from Prince Moulay Abdullah of Morocco, which I told to Dr. Hammer.

Q. That call had been earlier received, is that right? A. That call had been received about a few weeks earlier, maybe a month earlier, and I just recited what the call was about.

Now, he also told me in the call that I was to go to Washington—

The Court: You are saying, "He." None of us were there, you know.

A. The prince as the king's representative asked me to go to Washington with Marvyn Carton, who was handling this phosphate for me, to go to Washington and see the phosphate minister at the time. I forget his name. I think it was Bengelloun, but I am not sure. I would have to look at my memorandum that was made at the time.

The Court: Going back again, you made a reference to a 25% interest you said that he wanted you to have. Who was the "he" at that point?

The Witness: The king. The prince said, acting as the king's representative, that they wanted (129) Allen & Company to take a 25% interest in the phosphates as they wanted a guarantee to Morocco that it would be done.

The Court: That is what you told Dr. Hammer?

The Witness: That's correct.

The Court: What did he say to that?

The Witness: There was nothing to say to it that I remember. I don't remember. I was just reciting the facts to him.

Q. I show you Exhibit P148, a letter dated November 8, 1965, purporting to be to Dr. Hammer and signed, is it, by you? A. That's correct, sir.

Mr. Van Voorhis: I offer that in evidence. It relates to the same transaction.

Mr. Nizer: Obviously this refers—

The Court: If you allow me to ask the question, does this refer to the Moroccan deal?

The Witness: Yes.

The Court: This has no reference at all to the matter that is at issue in this case?

Mr. VanVoorhis: It has a bearing on—

The Court: Judge, won't you allow the witness to answer the question?

(130) The Witness: Yes.

Mr. Van Voorhi[illegible]ought you were asking it to me.

The Court: Wher[illegible]eference to matters in this case?

The Witness: I have to leave that to counsel.

The Court: All right.

Mr. Van Voorhis: I might say, your Honor—

The Court: That is a matter of argument. I asked the witness a simple question, was this a reference to the Moroccan deal. He said yes. I asked, is there any reference to matters at issue in this case and the witness said yes, but he referred it to counsel.

I don't see anything in this letter that refers to the issues in this case. That is all I am saying.

Mr. Van Voorhis: I was just going to say now it is so related, if I may.

The Court: Go ahead.

Mr. Van Voorhis: The statement is made by Dr. Hammer in his deposition on the question of acquiescence in this so-called cancellation or abandonment letter of July 16, 1965 that he, Hammer, would not have invited Allen & Company to participate in the Morrocan venture if he hadn't believed that they acquiesced in the so-called (131) cancellation of July.

Now, it appears that Allen & Company were somewhat reluctant to go into the Morrocan situation and went into it at the insistence of the prince from the Morrocan government who objected to going ahead with it at all unless they were in it. I think that has a definite bearing.

Mr. Nizer: We press our objection to it, your Honor.

The Court: It may be received in evidence for whatever bearing it has on the issues in this case.

(Plaintiff's Exhibit P148 received in evidence.)

Q. Can you tell us whether or not you ever received Exhibit P59? A. Yes, I did.

Q. This purports to be a Xerox copy of the Kabazi letter of February 16, 1966.

Mr. Nizer: P59 is a letter from Ogbi to Galic.

Mr. Van Voorhis: I beg your pardon. I am mistaken.

No, I am not mistaken. What I said was correct.

Q. Did you receive that in the mail at some time? A. I did.

Mr. Nizer: What exhibit is that?

Mr. Van Voorhis: P159.

(132) Mr. Nizer: 159.

Q. When did you receive it? A. The early part of March 1966.

Q. How did you receive it? A. Received it in the mail, I believe.

Q. Was there any covering letter that accompanied it? A. None that I know of.

Mr. Van Voorhis: I offer it in evidence.

The Court: With respect to the exhibits that have been received in evidence thus far, I don't

want the originals here, but I would appreciate getting a photostat or a Xerox copy of each exhibit that comes in. I would rather work with copies.

Mr. VanVoorhis: We will see that that is done, your Honor.

The Witness: I would like to change that. I don't recall whether there was an enclosure.

Mr. Nizer: I didn't hear that.

Mr. Van Voorhis: He says he doesn't recall for certain whether there was a covering letter.

Q. I show you—

Mr. Nizer: Just one moment.

Your Honor, this is the letter concerning which there is the controversy of genuineness in the sense that (133) I explained in my opening statement.

It is also, of course, hearsay, sent by Galic presumably—by Kabazi to Galic, but it's sent to Charles Allen. We never received any copy of it and it is conceded that we never got it until the examination or deposition, when it was claimed that it was received.

So that there surrounds this document, your Honor, a very serious question both as to the authenticity of it, on which both sides have experts, orders of the Court, if your Honor would be good enough to hold that until that subject is presented to your Honor, and also the question of its hearsay character. This ought not to be received even subject to being stricken out, your Honor, we respectfully submit, under the surrounding circumstances of all the issues that now revolve around this document's propriety and admissibility.

There is no covering letter. We never got a copy of it. We didn't see it until 1967 when it was produced voluntarily, in quotes, by counsel just to impress us. I hadn't asked a question. I didn't know of its existence. They wouldn't give us the original to have tested. We had to move to have it tested. There have been several orders of the Court, one by Judge Mansfield and one by Judge Cooper, giving us permission, all over (134) serious objection, to take ultraviolet ray tests and other tests of it. There are now several experts who are ready to testify. The court's expert has filed a document in this Court which we take it is a court exhibit automatically. They have been discontent with the Court expert report and have therefore engaged two other experts who were cross-examined, examined on deposition.

All of that, your Honor, ought to be at least before your Honor before your Honor rules, I respectfully submit, and not take it even now subject to anything.

Mr. Van Voorhis: We are simply offering this testimony by Mr. Allen that he received this copy of this letter and that date.

The Court: What does that prove? Supposing I even receive it. Is it supposed to be proof of the facts contained therein?

Mr. Van Voorhis: It is certainly proof that—

The Court: Of what?

Mr. Van Voorhis: It is certainly proof that Mr. Nizer's contention is not true that it was a later fabrication.

The Court: That is a different question. I am asking you, even assuming there were no issue of authenticity, how does the sending of this letter by Mr. Kabazi (135) to Galic establish the facts that are referred to therein as fact?

Mr. Van Voorhis: In my opening statement I referred to the circumstance that the letter was a communication on official stationery of the Ministry of Oil of Libya in which he made it a matter of record—he so testified in his EBT—

The Court: Is this the letter that you say he made a matter of record and he testified that he destroyed the carbons?

Mr. Van Voorhis: Not the carbon copy, but the carbon.

The Court: Yes.

Mr. Van Voorhis: That's right, the same letter.

The Court: Then I misunderstood. I am just trying to recall what the opening statements were. Did I misunderstand the reference that either one of you made to the destruction of carbons or carbon copies?

Mr. Van Voorhis: Just carbon. Mr. Nizer's objection, as I understand it, that he is just making as to the authenticity, first, of the letter, and second, to its—

The Court: And its hearsay nature.

Mr. Van Voorhis: So far as the authenticity (136) argument, I don't believe that it will be even a matter of fact in dispute.

The Court: It is in dispute.

Mr. Van Voorhis: It is in dispute all right, but I mean on the basis of the evidence. But regardless of that, Mr. Nizer is attacking, assertively, at least, on the basis of authenticity. We are certainly entitled to support its authenticity by showing that this copy of it was received at a date before the time when Mr. Nizer has told your Honor—

The Court: When Mr. Nizer used the term of authenticity, I believe that this went not so much to the question of the signature of Mr. Kabazi, but rather the date of the letter. In other words, the

contention is, if I remember correctly, that this letter was predated 2/16/66 and in fact had been sent long subsequent to the events.

Do I state the position correctly?

Mr. Nizer: Precisely.

The Court: That is his claim of lack of authenticity.

In any event, the question of authenticity at this stage is an issue of fact, isn't it?

Mr. Nizer: Yes, your Honor.

(137) The Court: I am very mindful of your position with respect to its hearsay nature and the self-serving nature of what is contained in the communication. What difference does it make if I receive it on the same basis? I am aware of your position.

Mr. Nizer: This witness, Mr. Allen, can't testify to this, and to further indicate to your Honor—I wouldn't ordinarily anticipate cross-examination, but your Honor has already heard some answers—here are his answers in the deposition, which throw further light on why this ought not to be received at all. He was asked:

"Q. Now, did you receive this document"—this is this one—"in the mail? A. I don't recall."

At 413:

"Q. Was it delivered to you in hand? A. I don't recall.

"Q. Did it come to you or to Herbert? A. I don't recall.

"Q. Did you receive it, Kabazi letter, in the United States or abroad? A. I don't recall.

"Q. Looking again at the Kabazi letter, who was it who sent it, this copy, to you? (138) A. To me?

"Q. Yes. Mr. Galic? A. I am sure I got it from Mr. Galic, but I don't know where.

"Q. Where is the covering letter that enclosed this photostat? A. There is no covering letter that I remember."

The Witness: Could I answer on the covering letter?

The Court: Let Mr. Nizer finish. He is making a lawyer's argument.

The Witness: I will tell you why.

Mr. Van Voorhis: Wait until he finishes.

Mr. Nizer:

"Q. Was there any covering letter that accompanied the Kabazi letter? A. I don't recall.

Q. Did you ever ask Mr. Galic since this suit was instituted as to whether he had sent you a covering letter? A. I don't recall."

And so it goes on and on and on.

I think this is too serious a claim in form of hearsay by his presenting a letter from someone else that we never got even to take the liberal view which I understand the Court trying this case without a jury would take (139) ordinarily and which your Honor has, but I don't think it ought to apply to this. There ought to be a *voi dire* in which we have a chance to present testimony through the Court document which has already been filed by the Court-appointed expert and other material data ought to be received if your Honor is going to consider this even for tentative reception.

(140) The Court: Was Mr. Galic examined with respect to this letter?

Mr. Nizer: Yes, your Honor, and if you will forgive a characterization, he was a shambles on it, and I would like to read all of that. The deposition has been marked for that purpose—

The Court: I will accept your suggestion here and we will have a *voir dire* on this before it is received in evidence.

The Witness: Could I just answer the covering letter? If there was a covering letter with it, it would have been thrown away, because the letter itself states the subject.

The Court: You would have thrown away a covering letter that—

The Witness: We don't keep covering letters. The letter itself it the subject matter and we don't keep covering letters where the letter itself is the subject matter.

The Court: Well, I believe there is in evidence a communication to your firm—

The Witness: There are some, I admit, but most we don't keep.

The Court: There was a covering letter that (141) apparently you didn't throw away. There was a pretty important document—

The Witness: Yes. If the covering letter says, "I am enclosing the following," I would throw it away.

Mr. Van Voorhis: Your Honor, we contend, as you know, as far as the materiality of it goes, it is part of *res gestae* of the awarding of the concession.

The Court: Well, *res gestae* is a very all-inclusive, collective term but I have a doubt whether it extends to this type of communication received under the circumstances as testified to in this courtroom and that has been adverted to as far as the deposition before trial is concerned.

I think we ought to move along with this case. There are serious contentions made with respect to it, on both sides, and I am frankly prepared to receive it on the same basis I have received so many documents, the relevancy of which is doubtful, as well as the competency. In view of the earnest request made by defense counsel who thinks it is of such importance that there ought to be a *voir dire*, and I will allow the *voir dire* which as-

sumedly will consist of the testimony of experts in this case as well as other witnesses who may have knowledge of the origin of the letter, date of the letter, circumstances (142) under which it was sent, and circumstances under which it was received by this witness or those associated with him.

Mr. Van Voorhis: This very copy, incidentally, was identified as a copy in the testimony of Kabazi himself, which is extremely clear and extremely forthright.

The Court: I don't have to repeat: I don't accept Mr. Nizer's statements with respect to a witness' testimony being a shambles and, with due respect also to you, I can't accept your statements as to fact matters.

I often tell jurors, and I am told you have told it to jurors yourself, that statements by counsel are not a substitute for evidence.

Mr. Van Voorhis: I can't listen to statements like that just made by Mr. Nizer without some reply.

The Court: The court supplies the reply in each instance and disregards the statements by counsel with respect to fact questions.

Mr. VanVoorhis: If I didn't reply, he would say I acquiesced.

The Court: On that pleasant note, continue your direct examination.

By Mr. Van Vorrhis:

Q. I show you Exhibit P163, addressed to Charles Allen, 30 Broad Street, and signed by Galic, French Cable (143) Company. Did you receive that cable? A. Yes, I did.

Mr. Van Voorhis: I offer that in evidence.

The Court: Just to come back to this exhibit for identification 159, Mr. Allen, what is your best recollection

as to when this came to your notice, no matter how it was received by you?

The Witness: This came to me about the same time that the telegram just presented to me came to me, when Galic was threatening to sue.

The Court: What time do you fix that as?

The Witness: March, 1966.

The Court: Do you recall whether it was before or after the award of the concession was made?

The Witness: Well, I don't know that we were advised when the award was made. The award was supposedly made in February, but I don't know that we were advised. I was not aware of it. We may have been advised at a later date by Mr. Galic when he sent his telegram. I believe he was away at the time and we received his telegram and that was the gist of it, he had found out the award was made and he was furious about it and threatened to sue us because we had let him down with Dr. Hammer.

Mr. Nizer: Your Honor, with respect to this cable, (144) aside from the fact that it is a communication from Galic to Allen, it refers to the fact that "Letter follows," and there has never been a letter produced.

In the first place, I would like to complete document to be presented for your Honor's ruling and for our objection.

The cable itself says, "Letter follows" at the end of it.

The Witness: I got in touch with Galic right after getting the telegram and talked him out of any idea of suing us or anybody else.

The Court: That wouldn't explain the point that Mr. Nizer is raising now.

The Witness: Well, he is not—

The Court: He is referring to the fact that the cablegram states, "Letter follows" and he is asking where is the letter.

Mr. Van Voorhis: The witness is saying that—wasn't sent? I would take it Mr. Galic is the only one that would know that.

The Witness: I got the cablegram—

The Court: All you are saying is that you didn't get the letter.

(145) The Witness: I told him to forget it, there was no sense in suing, and we were protecting what we had, our 25 per cent, and he accepted that.

The Court: I am not taking that statement as binding as far as this defendant is concerned, you know that, Judge Van Voorhis?

Mr. Van Voorhis: Yes, I do.

The Court: I have not seen the cablegram that was shown to counsel—

By Mr. Van Voorhis:

Q. Now, was there some mention—

The Court: I am trying to look at the date—oh, it is March 15th—

Q. In this telephone conversation with Mr. Galic, was there any mention made by him of the relative value of these two concessions— A. Yes. 42B—

Mr. Nizer: I object to that, sir, the reference to values between Mr. Galic, who has been discharged, and himself.

Mr. Van Voorhis: I am asking for the conversation.

The Court: I take it for whatever it is worth.

A. When he reported about these allotments of the (146) concessions, he said 42B was very good and 44 was good but not as good as 42B, and that there were the original concessions that we originally started trying to acquire, going back to the original conversation.

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(147) By Mr. Van Voorhis:

Q. Mr. Allen, I had just asked you whether you have told us all you recollect of this conversation with Galic. A. I told Galic that we had our interest, that he is not to worry.

Galic said he would take the concessions away, but we told him not to do it.

Q. To refresh your recollection, did you tell him whether or not he should talk directly to Hammer?

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A. At this conversation?

Q. Yes. A. I don't recall.

Mr. Van Voorhis: Very well, I will pass that by.

(148) Q. Did you talk with Galic between March and July, 1966, about his talking to Hammer? A. Yes, I did, and I think he was—

Q. Did he call you or did you call him? A. There were conversations and letters back and forth between Hammer and Galic and I guess conversations with Galic and myself and possibly with Hammer, but I can't pinpoint them.

Q. Was anything said about—

Mr. Nizer: Objection to his leading.

Q. I show you Exhibit 179, dated July 5, 1966, which purports to be a copy of a letter from you to Dr. Hammer. A. Yes, that's correct.

Q. Was that letter sent by you to Dr. Hammer? A. Yes, that's correct.

Q. Was the telegram dated July 25th enclosed in that letter? A. Yes, it was.

Q. That purporting to be a telegram from Ferdo—Galic, I suppose—to you, is that right? A. To me, yes. Yes.

Mr. Nizer: Your Honor, I object to this not on the ground that we didn't receive this. This letter was (149) received from Allen with a copy of the cable but I object to it on the ground that this relates to a settlement with Galic thereafter and, therefore, is not admissible since it has no other pertinence or relevance, really. It is the beginning of the attempt to create a settlement and Judge Ryan, in a similar matter, with respect to settlement payments, made a special ruling on that, that he wouldn't permit any collateral matter with respect to settlement in any matter in this case to go into evidence. I have that ruling here, your Honor, but I know your Honor will make your independent judgment.

The Court: I was going to say, even assuming I accept it with a statement "according to your advice, have done utmost with Hammer," doesn't this really come into the category of self-serving statements by a witness? If it were part of a settlement in negotiations, the law is pretty well settled on that, at least I think it is.

Mr. Van Voorhis: We have a 25-page brief, your Honor, that we want to submit to you. We didn't have a chance to answer Mr. Nizer's brief and I am not criticizing him for working up to the last minute, but we got it just late last week and we finished this Friday and we ask your Honor to give that consideration.

The Court: I will, but I have not seen that brief (150) yet. I saw it this morning, but it came in over the weekend, I believe.

Mr. Van Voorhis: I will come to that now. I don't know if your Honor ruled on my offer of that letter. Did you exclude it?

The Court: Which letter are you referring to?

Mr. Van Voorhis: The one we were just speaking about.

The Court: Exhibit 179?

Mr. Van Voorhis: Yes.

The Court: After my statement to Mr. Nizer I think it was a fair implication that I would receive it on the same basis I am receiving a great many other exhibits in this case.

(Plaintiff's Exhibit P179 received in evidence.)

Q. I show you Exhibit P180, a letter dated July 8, 1966, purported to be signed by Armand Hammer to you. A. Yes.

Q. With a copy of a wire enclosed that he supposedly sent to Galic, and I offer that in evidence.

Mr. Nizer: Same objection. This is a relationship to a meeting leading to settlement talk.

The Court: It may be received on the same basis.

(Plaintiff's Exhibit P180 received in evidence.)

(181) Q. Did there come a time, Mr. Allen, in July or August, 1966, when you received a telephone call from Mr. Hammer? A. Yes, and as a result of that we setup a meeting. Dr. Hammer was very worried about Galic. I don't recall any—

Q. What was the substance of what he said and what you said?

Mr. Nizer: Now, wait. May I please have first where and when and strike out "he was worried"?

The Court: Yes.

A. The meeting was held in our office. Herbert Allen was there—

Q. No, I am talking about the telephone call. A. The telephone call, to set up a meeting. He asked us to set up a meeting to get Ferdo Galic off his back.

Q. Was a date, time and place set for the meeting? A. Yes. It was set about the middle of August—I don't

know the exact date in August, but about the middle of August, about August 15th or so.

Q. Did the meeting occur? A. Yes, the meeting did occur.

Q. At your office, 30 Broad? (152) A. At our office. Dr. Hammer came in and he was very worried because of the—he was afraid that Galic was going to take the concessions away, that he could take them away, had enough influence to do it.

Q. When you say he was very worried, did he say that? A. Yes, that is what he said, he was very worried about it and would we please get Galic off his back.

I got Galic on the phone and I told him, in front of Hammer, I said—we had had not had any previous settlement talks or anything else referring to it and this is all I ever heard about settlement—I said, "It might be a good idea for you to settle with Dr. Hammer because we have 25 percent of this deal"—this was said in front of Dr. Hammer—"and we will protect you. You can have up to half of our deal, if you want it."

He argued and said, "I have 4 percent bruto and I don't want to give that up."

I said, "All I can do is get you together with Dr. Hammer. Are you willing to meet with him?" He said yes.

With that, Dr. Hammer thanked us for it and made his own arrangements.

Q. Is there anything further? A. No.

(153) Mr. Nizer: I object to the leading.

A. Dr. Hammer was there all the time, heard me talk about the 25 per cent, had no objection to it.

Q. Did he say anything about that? A. Yes. He admitted we had 25 per cent and I told him—

Q. Don't say he admitted. If you can, recall what he said, as nearly as you can, in substance. A. I told him we were going to use our 25 per cent to try and effect

a settlement with Ferdo so that he could have part of it and Dr. Hammer said okay. That is as far as I can remember.

Q. I show you a letter dated August 29th, 1966, Exhibit P188, signed Ferdie, apaprently, and addressed to "Dear Charlie." Did you receive that letter? A. Yes.

Q. Is that Galic's signature at the end of it? A. Yes.

Q. Read it, if you wish to.

(Pause)

Mr. Nizer: Your Honor, while this is hearsay, in view of what has transpired here and to facilitate matters, I understand that your Honor may wish to take this subject to the same condition.

(154) The Court: It will be received on that basis.

(Plaintiff's Exhibit P188 received in evidence.)

Mr. Van Voorhis: I don't know that I understand what Mr. Nizer means.

The Court: It is subject to a motion to strike and even if I receive it without its being stricken, as applies to all exhibits, if it is not relevant, if it is not material or not competent, I will not consider it in terms of the final determination.

Q. Did you have any telephone communication with Galic at or about this time with reference to this subject?

Mr. Nizer: Objected to.

A. Yes, I reported the meeting—no, I spoke to Galic, I did it when we were together, which I just repeated.

Q. I mean after that, following your receipt of that letter of August 29th, did you have any conversations—A. May I see that letter again?

Q. Yes, we have a copy.

(Document handed to the witness.)

A. I don't know, I am getting a little—

The Court: What is your answer?
The Witness: I am just trying to think.

A. I don't recall at this point.

* * *

(155) Q. Did you have any further conversation with Hammer or Galic in reference to Galic and Hammer's dispute?

Mr. Nizer: Same objection.

The Court: Objection sustained. I think we are going far afield.

Mr. Van Voorhis: Just on the basis of the form of the question, your Honor?

The Court: It is so clearly irrelevant to whether or not these plaintiffs had a 25 per cent participating interest with the defendant and whatever arrangements the two parties had is between themselves and whether or not there was an understanding that the agreement was cancelled. I think we are spending a lot of time on obviously irrelevant matters, even though I have received many items already that come within that category.

Mr. Van Voorhis: I offer in evidence P183, a letter the authenticity of which is conceded, signed Ferdinand Galic, addressed to Dr. Armand Hammer, dated August 26, 1966. Along with it, I offer P184, check dated August 26, 1966, $16,000, Armand Hammer to Ferdinand Galic.

(156) Mr. Nizer: On that, your Honor, they are inadmissible, it seems to me, with reference to a settlement, $16,000 check paid, and so on.

The Court: I am just after saying that I don't know how this proves there was an agreement between the plaintiffs and defendants and if in fact there was a valid agreement, whether or not the parties had come to a subsequent arrangement. Why do you spend time on it? I will take it.

* * *

(159) Q. Did you have a conversation with Mr. Hammer at (160) some time in June of 1967? A. Yes, I did.

Mr. Nizer: 1967?

Mr. Van Voorhis: 1967.

A. Yes, it was on a Sunday around either June 11th, 12th or 13th, whichever was a Sunday. Dr. Hammer called me up and said, "Is Ted Benahum in town? Probably we could all get together."

The Court: Who was in town?

The Witness: Ted Benahum.

A. I said, "No, he is in Israel."

He said, "Well, I'll be in town in ten or twenty days. Will you be there?"

I said, "Yes."

He said, "We can sit down then and if you would—we can discuss our agreement and Holiday Inn and copper and phosphates, and if you would settle the agreement, why then you can become one of the lead underwriters, one of the major underwriters in our new issue company coming."

I said, "I am not interested in that but I will be glad to see you in the ten, twenty days when you come.

Q. And did he come? A. After June 11th, no, I didn't see him, no. At (161) least I don't remember it now.

Mr. Nizer: I move to strike the discussion.

The Court: This is in June 1967?

The Witness: That's right.

Mr. Nizer: And it talks of settlement of an agreement.

The Court: He said he didn't show up anyway, so what difference does it make?

Q. Have you exhausted your recollection with respect to the conversation on this occasion in June 1967?

Mr. Nizer: Objection to it; leading and suggestive.

Mr. Van Voorhis: I don't know how you can exhaust the witness' recollection until you ask him.

A. Let me see now. I don't know. I am not thinking so well. I am a little tired.

Q. Was any mention made by Hammer of Wintersall?

A. Oh, yes—

Mr. Nizer: Objected to as leading.

The Court: You are really leading the witness. I sustain the objection. We have a witness here who is testifying with respect to matters, and I think from his last answer it seemed to me there was no basis on which to suggest that he had not recalled the entire conversation. (162) You are really suggesting to him—

A. There is a matter that was important. He did ask me about Wintersall and I said, "No, I don't know them at all."

He said, "Well, if Galic did anything with Wintersall, that would break our contract."

The Court: When was this, in June 1967?

The Witness: June 1967.

The Court: Was this after you commenced suit?

Mr. Van Voorhis: No.

The Witness: No. I wrote the memorandum down and took it down the office the next morning and dictated it just as I wrote it in longhand.

Mr. Nizer: After the claim letter, your Honor.

The Court: The claim letter was sent when, in January or February?

Mr. Nizer: January 31, 1967.

The Court: I must suggest to you, in all fairness, Judge Van Voorhis, that a statement of this

kind attributed to a witness subsequent to an assertion of a claim is of questionable probative value, to say the least. I prefer to get actual evidence rather than the concepts that are being advanced.

Mr. Van Voorhis: I think admissions are relevant. (163) I think this was an indirect admission that was quite cogent. Of course, what he was trying—

The Court: I think we ought to get evidence. Now, please, put the question to him.

Now, do you have a recollection of that conversation?

The Witness: That was the conversation.

The Court: All right. Now, will you state the entire conversation as you recall it? What you said to him and what he said to you.

The Witness: He called me up and said, "Is Ted Benahum in town?"

I said, "No, he is not. I think he is in Israel."

He says, "Well, that's too bad, but I will be in New York in ten or twenty days." Then he said, "Do you know whether Galic had any business with Wintersall?"

I said, "No, as far as I know. I don't know."

He said, "Well, if he did, that breaks our contract." He said then, "I'll be in and talk to you on an agreement and Holiday Inn, the copper and the phosphates.

The Court: What did you say to him in response to that?

The Witness: And then he would include us as a major underwriter in this new offering they were going to (164) bring out the following week. I told him—I said I wasn't interested in that but if he wanted to come in ten, twenty days, I would be there.

The Court: Did he come in in ten, twenty days?

The Witness: I don't recall. No. But I tell you there was a conversation you left out before which we didn't

wait until 1967, whatever it said about pursuing a claim. We got hold of our lawyer in October 1966 because we had an added responsibility, we had Ferdinand Galic who we were protecting now because he had signed away his rights, so we asked our lawyer to investigate as to the legal part of it, so that we knew—we were a little afraid that Hammer had been a little tricky with Galic, so we called our lawyer in to get him to investigate and see what, how or what actions we should take.

The Court: Do you think I am going to take that statement even though no objection is made to it?

Mr. Nizer: I do object. I did not want to interrupt the witness. I vigorously object.

The Court: Do you think I would accept that statement as evidential in this case?

Mr. Van Voorhis: I think that—

The Court: Let's not argue it any further.

Mr. Van Voorhis: I just want to say one thing.

(165) The Court: I would allow him to say that he consulted with his lawyer, but this other reference, why, on its face it's inadmissible.

Mr. Van Voorhis: What the defendant is contending here—

The Court: Now, I don't think we ought to spend much time and I have received so much testimony today which normally would not be in a case, it certainly would never be in a case that were tried to a jury, but I must say there are limits as to what is to be received even under this very liberal rule I am applying here on the receipt of evidence.

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The Court: After you had this conversation with your lawyer, which you said you had in October, 1966, is that correct?

The Witness: That's correct.

The Court: Did you send the claim letter immediately thereafter?

(166) The Witness: I sent it as soon as our lawyer—

The Court: I asked you the question, did you send the claim letter immediately thereafter?

The Witness: You mean immediately after talking to our lawyer?

The Court: Yes.

The Witness: Our lawyer didn't give us an opinion. I said I sent it as soon as we had his opinion.

The Court: When did you get the opinion from your lawyer?

The Witness: That was sometime in early 1967.

The Court: When in 1967?

The Witness: I'd have to get the exact date. The date of the letter. I haven't got the letter.

* * *

(167) Q. I show you Exhibit 189. This is a letter dated December 2, 1966 from you to Galic. Does that refresh your recollection in any way as to when it was that you talked to your lawyer, Mr. Deer? I mean as to when Deer gave you an opinion? A. No, he hadn't given us an opinion at that time.

Q. I say, does it refresh your recollection as to when he gave you his opinion? A. No. No.

Q. You say he had not given you his opinion by that time? A. No, I believe that letter was sent by the lawyer anyway.

Mr. Nizer: This is not by the lawyer if it's 189. It's to Galic by Allen, and therefore has not [illegible]g to do with this. It's dated December 2nd.

The Court: Incidentally, was this lawyer that you referred—the same lawyer with respect to whom you testified earlier when you received the letter from the defendant?

Charles Allen, Jr., for Plaintiff, Cross

The Witness: That's right. That's right.

Q. Was this letter dated December 2, 1966 part of the review of the case which you had asked your lawyer (168) to make? A. Yes.

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Cross Examination by Mr. Nizer:

Q. Mr. Allen, when did you see Mr. Galic last? A. About six weeks ago.

Q. When did you talk to him last? A. Oh, in the last week.

Q. Where is he now? A. I don't know. He may be in Paris. He happens to be dying and that's why I talk to him constantly.

Q. Where was he six weeks ago? A. Mayo Clinic.

Q. Have you talked to him abroad or only here in this state? A. I talked to him abroad and over here. I make inquiries as to his condition constantly.

Q. When did you talk to him last? (169) A. In the last few days.

Q. Where was he? A. I think in Paris.

Q. You think? A. I don't put in the calls. I tell my switchboard to get Mr. Galic and they get him. I don't know where he is most of the time. But he is home in Paris, I believe. He was in Deauville earlier.

Q. But, so far as you know, the switchboard might have gotten him in New York? A. No, not in New York. I have called him in Paris and he has been in Paris in the last few days.

Q. You told his Honor that you usually destroy the covering letters, keep only the substance of it. How long have you followed— A. In most cases, or else we have files that we couldn't do anything about. When we get a bill, we don't keep the covering letter; we just put the bill in the file.

Q. How long has this practice been going on with respect to correspondence? A. Since 1922.

Q. And in this case, you have observed that you did keep covering letters in many instances of exhibits that have been marked? (170) A. A covering letter—

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A. And I didn't observe.

Q. During the depositions that were taken of you and of Herbert Allen, you were present when Herbert Allen's depositions were taken, were you not? A. Part of the time only.

Q. And when your deposition was taken, was Herbert Allen there at all times? A. I can't answer that.

Q. Most of the times, as far as you know? A. I don't know.

Q. You don't know.

During those sessions, didn't you observe documents produced from your own files and from our files in which the covering letter had been preserved together (171) with the document which was being marked?

Mr. Greenspoon: That's objected to as improper cross, your Honor.

The Court: Overruled. It may go to the issue of credibility.

A. Did I what? Did I observe?

Mr. Nizer: Would the stenographer be good enough to read the question again?

(Record read.)

A. It's possible, but I don't recall which ones and whether they were addressed to me or who they were addressed to.

Q. Haven't you testified with respect to this Kabazi letter that there was no covering letter, not that you didn't know about it but— A. I didn't say any such

thing. I said I don't recall. But if there was a covering letter, I would have torn it up, thrown it away.

Q. You testified before on direct examination, sir, about this meeting in your home, or was it Dr. Hammer's home in Greenwich Village? A. Dr. Hammer's home in Greenwich Village.

Q. What was the date of that, sir? A. I think it was August in '65.

(172) Q. Do you know whether it was '65 or '66? A. I think it was August '65. I can't be sure, though. I can't be sure of it, but I think it was August '65.

Q. Haven't you testified when you were asked what year that would be that you don't recall even the year? Haven't you so testified on a deposition?

Mr. Greenspoon: That's objected to, your Honor. Let's have the question and answer from the deposition. I think that's improper cross.

Q. I read from Page 163 of your deposition:

"Q. In July 1965, either within a month or a few days, then you say—then you say at his home, what year would it be in his home? A. I don't recall.

"Q. Do you know whether it was 1965 or 1966? A. I don't recall."

A. Do you want me to answer that?

Q. I will in a moment, sir. Let me just read it to you first:

"Q. Do you know how many months it was after July, the July 1965 letter? A. I don't recall.

"Q. Have you any idea whether it was a year or a (173) year and a half later? A. I don't recall."

Now, first, did you make those answers to those questions? A. I don't know whether I did or not, but I will answer it if you want me to answer it.

Charles Allen, Jr., for Plaintiff, Cross

Q. Well, my question is, before you answer one I haven't placed, what is it, have you any memorandum—

Mr. Nizer: Withdrawn.

Q. What memorandum did you refer to that refreshed your recollection that you couldn't remember even a year and a half within the date? A. Just a few weeks ago, I happened to find a photo-album at home which concerned my relations with the King of Morocco and the Prince in the potach deal and that has the dates which refreshed my recollection of what it was all about and when it was held.

Q. Do you say that this meeting at Dr. Hammer's home was with respect to the Moroccan deal and the Prince's conversation, or was it with respect to another matter and you testified separately about the Moroccan deal on another date? A. I said it was on both matters.

Q. When did you look at that photograph, sir? (174) A. Just this past week.

Q. Will you please be good enough to produce it tomorrow morning when we continue?

Mr. VanVoorhis: We can produce it right now.

Mr. Nizer: All right. Will you please?

Would you show me the particular photo? Give it to the witness.

Q. Which photograph are you referring to, sir? A. Well, there's memos in here plus photographs plus newspaper clippings.

I testified to the one memorandum, and that memorandum is the thing that this whole thing brought back the recollection where it was and what it was about.

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Charles Allen, Jr., for Plaintiff, Cross

(176) New York, New York.
September 11, 1973—10:00 A.M.

(Trial resumed.)

CHARLES ALLEN, JR., resumed.

The Court: Proceed, please.

Cross Examination by Mr. Nizer:

Q. Mr. Allen, you testified that after you received the termination letter of July 16, 1965, which is Exhibit P124— A. I can't hear you.

Q. You testified that after you received the termination letter of July 16, 1965, marked Exhibit P124, you had a conversation with Dr. Hammer regarding that letter, is that right?

Mr. VanVoorhis: Your Honor, as to the use of the characterization "termination letter," we assume that is just a shorthand expression to refer to the letter from (177) Occidental of July 16, 1965. We would object to it ordinarily because it is a characterization with legal implication.

I don't want to raise any unnecessary objections and I assume that Mr. Nizer refers to it in that way simply as a shorthand expression.

Mr. Nizer: Yes, your Honor.

The Court: You referred to it yesterday as an abandonment letter and he refers to it as a termination letter. The legal consequences will be determined by the court.

Let's not spend time on it.

Q. Do you recall the testimony yesterday to that effect? A. I don't know what you are saying.

Mr. VanVoorhis: Please read the question.
(Question read.)

A. Yes.

Q. What was the date of that conversation? A. Within a month from the time we received the letter.

Q. That would be in August— A. Two or three days either way.

Q. That would be in August, 1965? A. That's correct.

(178) Q. That was the first conversation you claim you had with Dr. Hammer after receipt of that letter? A. I don't recall.

Q. Where did you say that this conversation with Dr. Hammer took place? A. At what date is this?

Q. No, where. A. I say, what date are you talking about? August, 1965?

Q. Yes. A. At his home.

Q. Where? A. In Greenwich Village.

Q. Haven't you in your deposition in this case sworn that this conversation was on the telephone or in your office and not in Dr. Hammer's home? A. That is not my entire testimony. It mentions at his home or at my home further on.

Q. I read to you from page 142 of your deposition:

"Q. Will you tell us the first conversation that you had with him at July 16, 1965, where and when and what was said on this subject, if anything? A. I can only generalize on it.

"Q. Before you generalize, let me probe your memory (179) so that we can have it as exact as possible.

How soon after the July 16, 1965, letter do you claim that you alked to Dr. Hammer about the matter of this letter, if you did? A. I should say promptly thereafter, within the next month or so.

"Q. Where was that conversation? A. Either over the telephone or in our office."

Did you make those answers— A. Read on.

Q. I will give you the deposition and invite your counsel to aid you and tell me where that answer was changed. You may read on. A. Have I the same deposition that you have, that my attorney has?

Mr. Nizer: He says yes. It starts 142.

Mr. Greenspoon: Since I have been invited to assist the witness, if he will look at page 154, beginning with line 5—

Mr. Nizer: 154?

Mr. Greenspoon: Yes, beginning at line 5, and going down through line 19.

Q. It refers to a telephone conversation, doesn't it, Mr. Allen? What counsel refers to is a telephone (180) conversation, isn't it? You can read around it, please. A. "It was either here or by telephone. I don't recall how."

The Court: Well, the "here," I take it, was in your office?

The Witness: No, New York. It was either in New York or by telephone. I didn't recall how.

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(181) Q. "Q. Yet you waited a month before you—A. I said within a month. I don't know the exact time.

"Q. That is why I am asking you. A. Dr. Hammer might be traveling and might not be available. I might be traveling.

"Q. Is there any way you can find out from your records about when you made that call? A. No.

"Q. Were you in the city in your office when you made the call? A. It was either from my office, from my home, or Dr. Hammer's office or his home.

"Q. In other words, you were in New York either in your home or in your office? A. It was in New York.

"Q. He was in New York too? A. He was either here or it was by telephone. I don't recall how."

A. That's correct. Since then I recalled how by getting my Moroccan file, my Moroccan—

(181a) Q. Does your Moroccan file tell you anything about the fact you met him at Greenwich Village? A. Yes, it recalled what it was about, just as I testified yesterday.

(182) Q. Isn't it a fact that what you referred to as your Moroccan file dealt with November 1965 meeting and not the first meeting that you claim took place in August? A. Not so at all.

Mr. Nizer: May we have that file?

A. It is not a file, it is a photo album.

Mr. Nizer: I mean that, too.

Q. I show you the photo album that you call the Moroccan file, I take it? A. I don't call it a file, it is a photoalbum. It is not in my files.

Q. And turn to that page which refers to that Prince Abdullah incident and that is dated Tuesday, September 28, 1965? A. That's correct.

Q. And that refers to a conference that you claim was set up later, after September— A. Didn't claim anything at all. That brought back my recollection that Mr. Benahaum and Mr. Klehe and Moroccans had been trying to get us into a deal with Hammer and that is how I recollected what it was all about.

Q. Is there anything in this photo album that indicates to you anything here? Point to it, that it (183) was a conversation not on the telephone, but in Dr. Hammer's home? A. Yes.

Q. Where? A. This one—

Q. No, point specifically. A. Nothing to point to specifically. This brought to my mind what actually happened.

Q. Is there anything here that refreshed your recollection? A. Yes, there is.

Q. What? A. The whole memorandum.

Q. Mention anything in the whole memorandum which indicates the—is there anything in this letter? A. Yes. "Prince Moulay Abdullah called Mr. Abdallah from Rabat, Morocco on behalf of the king—said Dr. Hammer got in touch directly with the phosphate office. The prince and king want Allen in the group. Mr. Allen said it was Klehe, not Allen.

"The prince said they want Allen as this would be a guarantee to Morocco. C.A. said yes, yes, if they invite him.

"The prince said yes, they invite Allen. Also, (184) the director of the state phosphate mining office will be in Washington"—

That means we should talk to—

Q. To save time will—

Mr. Greenspoon: Will you speak slower.

Q. To save time you don't have to read all of it. Point to anything which refreshed your recollection that this was not a telephone call, but that you met with him face to face in his home. A. The entire memorandum.

Mr. VanVoorhis: He already answered that.

Q. Is there anything in that memorandum which refers to Dr. Hammer's home? A. No, there is nothing refers to his home.

Q. Is there anything in this memorandum which indicates to you that you didn't talk to him on the telephone, but met him in person? A. Yes.

Q. Where? A. The whole memorandum.

Q. Point to something specific. A. The entire memorandum brings back the phosphate matter to me.

(185) Q. Let's see if this memorandum also refreshed your recollection as to a few other things you testified to.

Charles Allen, Jr., for Plaintiff, Cross

Mr. VanVoorhis: May we have the album marked for identification?

The Court: It has been marked, has it not, for identification?

Mr. VanVoorhis: I don't think it has been.

Q. You testified yesterday that you told Dr. Hammer at this first meeting now, whether it is on the telephone or otherwise for a moment, is that the Occidental termination letter of July 16, 1965 was meaningless. Do you recall that testimony? A. Yes.

Q. And you said Dr. Hammer, when you told him this acquiesced? A. I did not say that. I said that when I explained the phosphate deal to him that he acquisced.

Q. Was this conversation at the same time as you said the conversation of August 1965, is that what you are talking about too, as I am? A. What are you talking about August 1965?

Q. What you told Dr. Hammer about the fact that (186) it was meaningless? A. Are you talking about the conversation in his home?

Q. I am not going to quarrel any more. A. Well, I don't know the date. All I know is the conversation in the home in August.

Q. Well, for this purpose, let's assume it was there. You testified as follows yesterday. I read it to you. I read the last part of it. "We didn't want any"—Page 112, I am sorry. This is the end of your answer. I don't want to read the whole story about Morocco.

"We didn't want any part of it because of this eruption we had with Dr. Hammer and we told him that we would not proceed with Morocco at all, that Morocco would not proceed without us with Dr. Hammer unless he understood this other matter that we continued to work and the contract was still in force and he acquiesced in it."

"That's correct."

And then his Honor asked you, "When you say he acquiesced in it, what did he say? I asked what the conversation was," said his Honor.

Will you tell us again what Dr. Hammer replied? A. Can you give me—

Q. Can you remember what you testified? (187) A. You read part of it. You didn't read all of it.

Q. I read the last question of his Honor and I asked you again, tell me what did Dr. Hammer reply to that statement.

Mr. VanVoorhis: Objection unless he reads the answer to the—

The Court: Objection overruled. Perfectly proper cross examination.

A. Well, he would have to read the opening part of it.

The Court: No, you are not saying what he had to read, Mr. Witness, please.

I will admonish the lawyers this morning to conduct the trial or conduct, carry on in the conduct of the trial as required. Let the lawyers makes the objections, not you. What was the conversation?

The Witness: The conversation was he acquiesced and that was it, and then he said—I think he said he was going to go ahead from there.

Q. Did he ask you to continue working in the matter to do exactly what you had been doing? Did he say that or not? A. I believe he did say that.

(188) Q. You are not sure? A. He did say that, he wanted us to continue working.

Q. Did he say that to you? A. Yes, he did say that to us.

Q. What else did he say, if anything? A. I don't recall anything else at the minute.

Q. Did he say anything, other things that you don't recall? A. If I don't recall, I—

Q. You don't know? A. No.

Q. Now, haven't you, in your deposition when asked about this matter testified that Dr. Hammer did not reply that he said nothing? A. The Moroccan file refreshed my memory on where the meeting was and what happened? My first question is didn't you testify? I didn't ask you what refreshed it. Didn't you testify in your deposition—

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(189) Q. That Dr. Hammer was silent and said nothing, didn't you so testify? A. At some time or other. I don't know if it is in reference to this.

Q. Yes, in reference to this. I wouldn't ask you otherwise. A. It is possible. Yes.

Q. That testimony was given about six years ago? A. That's right. No, wait a minute now, it wasn't six years ago.

Q. Well, it was—that testimony was given on December 1, 1967? A. That's correct.

Q. Roughly? A. That's correct.

Q. All right, now let me read it to you at 143, sir.

"Q. I am talking about the conversation first. When you said the letter is meaningless, we are just going to continue on, what did he say? A. Nothing."

A. That's correct.

Q. He was just—

Mr. VanVoorhis: Please read this correct. (190) "Nothing that I can recall," he said.

Mr. Nizer: He said nothing at the bottom of Page 143.

"Q. He was just silent on the phone? A. Yes."

A. That's on the phone.

Q. Yes, and didn't you describe throughout this entire deposition that it was a conversation in which you call him on the phone? A. I don't recall that.

Q. You don't recall? A. But it was all changed when I got the Moroccan file which brought back what actually happened.

Q. When you signed your deposition as recently as December 16, 1970, that would be almost 1971, you made no change of these answer, did you? A. No, I didn't. I was not aware of the Moroccan file at that time.

Q. First answer my question and then I will let you say anything you wish. A. I said no, I made no change.

Q. Can you—

Mr. Nizer: May I ask that this memo that (191) he refreshed his recollection be marked for identification, please. It is dated Tuesday, September 28, 1965.

(Document marked D59 for identification.)

Q. Now, aside from your answer that the general memorandum might have refreshed you in some way, do you now claim that this general memorandum also told you, refreshed your recollection that instead of saying nothing he acquiesced, is there anything in that which indicates such a refreshment? A. Yes, the entire letter, the entire memorandum.

Mr. Nizer: I offer this memorandum in evidence.
Mr. VanVoorhis: No objection.
(Exhibit D59 was received in evidence.)
The Court: All right.

Q. Did you tell Dr. Hammer that his termination cable to DeRovin was meaningless? A. Yes.

To DeRovin?

Q. To DeRovin. A. No, I didn't say—I didn't tell him. I just discussed our own.

Q. Did you tell Dr. Hammer that this termination of DeRovin was proper? (192) A. I don't recall.

Q. You don't know one way or the other? A. I would say no. We had nothing to do with DeRovin.

Charles Allen, Jr., for Plaintiff, Cross

Q. Does the Moroccan file refresh your recollection on that, sir? A. There is nothing about DeRovin in the Moroccan file. I don't know DeRovin.

Q. You forwarded the report on Dr. DeRovin to your office to Dr. Hammer, didn't you? A. The report from —did I forward it?

Q. Yes, your office. A. I think Herbert forwarded it.

Q. All right, and that report came to you from whom? A. It didn't come to me, it came from Klehe & Co. to Marvyn Carton.

Q. Who is Carton? A. He was handling the phosphate deal.

Q. Is he a partner of yours? A. No, not in Allen & Company.

Q. Pardon? A. He is not in Allen & Company.

Q. What is his position? A. He is an officer of Allen & Company, Inc.

(193) Q. A what? A. An officer of Allen & Company, Inc.

Q. Was that report that DeRovin called to your attention when it was received? A. Yes, it was.

Q. Did you read it? A. Yes.

Q. And I ask you, having read it, and having forwarded it through your brother, to Dr. Hammer, whether you said anything to him in this conversation of August 1965, that you felt Dr. Hammer was justified in sending a cable— A. No, I—

Q. Let me finish, please.—in sending a cable to DeRovin terminating his representation? A. I didn't agree with him.

Q. You didn't agree with whom? A. I didn't agree with his—I didn't agree whether he was right or not.

Q. You didn't agree with Dr. Hammer, you mean? A. I didn't agree. I don't know whether I expressed it to him or not, but I just didn't agree. I knew nothing about Dr. DeRovin. Dr. Hammer was running the (194) whole thing. He never brought us up on him.

Q. Who had introduced DeRovin into this venture, it was Galic, wasn't it? A. Galic, correct.

Q. And Galic was your friend who originally told you DeRovin had come to him to inspire him with the possibility of concessions, didn't you? A. I didn't say that at all.

Q. I am asking you the question, sir. A. I didn't say that.

Q. Isn't it a fact that when Galic talked to you, the very first time about this matter, he told you he had a man of the highest standing, who was *persona grata?* A. I didn't say that all.

Q. What did he say? A. He said he could get some very good concessions in Libya, that he had proper connections and if we could get the proper people and guarantee the financing that he could get the concessions.

Q. Did he mention in connection with what you say are connections DeRovin's name? A. He didn't mention any names.

Q. You are sure of that? A. I am not positive.

(195) Q. Yesterday— A. May I correct that and say that I am positive.

Q. You are positive that he did not mention DeRovin to you, is that it? A. If he mentioned it, I don't recall it.

Q. What were you positive of a second ago? A. What did you say?

Q. What were you positive of? I didn't follow you, sir. A. What is the question?

Q. You said a moment ago "I am positive." A. No, if he said it—I am sure that he didn't mention DeRovin to me.

Q. I show you Exhibit P32, December 7, 1964, addressed to you from Ferdinand Galic. Do you recall reading that letter? A. Yes.

Q. And now that I show you that exhibit, sir, look at the last paragraph. You can look at all of them, but

particularly the last paragraph and ask you if that refreshes your recollection that Galic did mention DeRovin to you? A. Never mentioned it.

Q. I read from P32. "The oil field as General DeRovin told me which Occidental Petroleum will get is the (196) best of all concessions. For this reason I will do my work in London, Geneva and Tripoli," and so on and the very first sentence of the letter "Met General DeRovin yesterday, who told me he was appointed—" so he did mention General DeRovin to you, isn't that correct? A. I answered the question.

Q. What was the answer? A. You will have to read it back.

Q. Never mind.

Mr. Van Voorhis: I think it ought to appear, your Honor, that the date of this Exhibit P32 is September 7, 1964.

The Court: That was included in the question. And the exhibit itself carries the date.

Q. Yesterday when you testified about your alleged conversation with Dr. Hammer shortly after you received the July 16, 1965 letter, I think you told us in effect that you told Dr. Hammer about the trouble you were having with Galic who also had been terminated by Dr. Hammer for Occidental, and do you recall your testimony on that given yesterday? A. I don't recall the testimony, but that happens to be true.

Q. And so you are telling us now that when you (197) talked to Dr. Hammer in August 1965, you mentioned the problems that you were having with Galic because of that termination which I call the termination, that cable, is that correct? A. The problems with Galic?

Q. Yes, the troubles with Galic you had. A. I wasn't having trouble with Galic, it was Hammer who was having trouble with Galic.

Q. Didn't you yesterday testify as follows at Page 112 of the minutes, in answer to his Honor's question at the bottom of the page, you said: "He," meaning Hammer, "Dr. Hammer told us to go right ahead. I told him about the trouble with Galic, and so forth." A. Where does that say I am having trouble with Galic?

Q. When you say you told him about the trouble with Galic and so forth, wasn't Galic writing to you and complaining? A. Galic was complaining about Hammer.

Q. Well, in any event, whether it was his trouble or your trouble, you mentioned Galic on that conversation according to you, is that right? A. I don't understand what you mean.

(198) Q. Well, let me try again, sir, maybe it isn't clear. Didn't you testify yesterday that in that conversation in August 1965, with Dr. Hammer, you referred to the Galic situation, no matter whose fault it was, didn't you so testify yesterday? A. I didn't.

Q. Pardon me? A. I didn't so testify, no. I said that —go ahead.

Mr. Van Voorhis: Tell us what you said.

The Witness: That what?

Mr. Van Voorhis: I said if you wish to qualify the form of the question, tell us what you did say as you recall.

A. He would have to read it when he asked me. I don't know the exact words, but that Galic was troublesome, and that we had assured him to go right ahead, that there is no change in anything, just go right ahead, and I also I believe at the time—well, he was creating—he was creating—he might have been troublesome, I don't know the exact words from yesterday.

Q. Now I ask you, in your deposition when you were asked about that conversation, didn't you testify that you had no recollection, mentioning Galic at all, (199) in that conversation to Dr. Hammer?

Mr. Greenspoon: It is objected to. I ask that the question and answer be read.

Mr. Nizer: In due time.

Q. My first question is— A. I don't recall.

Q. I read to you from Page 145 of your deposition.

"Q. In the first conversation did you take up Galic with Dr. Hammer? A. I may have. I don't recall.

"Q. Do you recall that you did? A. I don't recall.

"Q. You do not recall making any reference to the Galic termination? A. I don't recall."

But yesterday you did recall? A. I didn't testify that was the August meeting.

Q. My question was in the first conversation did you take up the Galic question? A. I had to set up this meeting with Dr. Hammer, so if I had a conversation with him, I didn't say any such thing.

Q. Do you mean that when I referred in the deposition to your first conversation that that didn't mean to (200) you the one that you testified to yesterday in August 1965? A. Setting up of a meeting I don't consider a conversation.

Q. Do you recall setting up a meeting now? A. The meeting was set up.

Q. Do you recall that you talked to Dr. Hammer to set up a meeting for the August 1965 meeting? A. I believe I did. I don't recall the exact date, but I believe I did.

Q. Did the Moroccan memorandum now marked an exhibit refresh your recollection on that, sir? A. No.

Q. You said a few moments ago, Mr. Allen, that you had no recollection, or else it didn't happen, either way, that the General DeRovin's name was mentioned by Galic. A. In the first conversation, I said it was not mentioned as far as I remember.

Charles Allen, Jr., for Plaintiff, Cross

Q. Now let me just read your deposition at Page 328 and if you wish to make a comment you may, I won't pursue it.

"Q. Were you ever told that General DeRovin was *persona grata* in Libya? Do you know that phrase *persona* (201) *grata?* A. The only thing I remember of that is when we wrote Mr. Hammer telling him that we had been warned about General DeRovin, if that is his name.

"Q. Long before that, I am asking about the affirmative aspect. A. No, I knew nothing about it.

"Q. Had you ever heard the name as far back as August 1964? A. When was the meeting in London, September '64?

"Q. Yes. A. I don't recall.

"Q. You have no recollection of hearing about General DeRovin until the meeting when Herbert came back from London? A. It is something in one of the letters. I don't know whether it is before or after, but I don't recall."

"There was a letter on August 29th that mentioned that Galic wrote to me."

Continuing on Page 331, I skip to 331.

"Q. Does this refresh your recollection that there came to your attention at least as early as August 29, 1964, from Galic this praise for General DeRovin and his name? (202) A. Yes, that's right.

"Q. You said a moment ago you might have even known it sooner. A. I didn't say I might have known him sooner. I say the name may have been mentioned sooner."

I skip to 332:

"Q. Do you recall any statement by Mr. Galic to you of General DeRovin's qualifications? A. I don't recall, but I am sure that he—I just don't recall."

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Page 353.

"Q. What are you going to say in addition to I don't recall? A. I am sure if he recommended it, he must have recommended him with some superlatives. I don't recall what they were.

"Q. My question is, do you recall any of these being amongst the superlatives? (203) A. No, I do not."

Now, one other, Page 351.

"Q. Galic was the man whom you had introduced to Dr. Hammer, right? A. For the purpose, yes, I introduced him to Dr. Hammer, yes.

"Q. Galic was the man who brought DeRovin into the picture as far as you know, right? A. As far as I know."

Did you make those answers to those questions? A. Yes.

(204) Q. After this conversation that you claim you had in August, 1965, did you write to Dr. Hammer confirming that conversation, as you claim, that he acquiesced? Did you ever write to him about that? A. No.

Q. Did you write to him that you were therefore continuing in the matter because you had this conversation and you just wanted to make it clear to him? A. No.

Q. The answer is what? A. No.

Q. Did you write anything to Dr. Hammer or Occidental or anyone else on behalf of the company stating in substance that you had told Galic that the termination letter of July 16, 1965, had no meaning? Did you write to that effect to anyone? A. No. I don't—no.

Q. On that occasion, of August, 1965, the alleged conversation, whether on the telephone or, as you claim, some other place, did you ask Dr. Hammer to write another letter withdrawing his termination letter of July 16, 1965? A. No. I trusted Dr. Hammer.

Q. What is the last comment? A. I trusted Dr. Hammer's word.

(205) Mr. Nizer: I move to strike that out, your Honor.
The Court: The answer is stricken.

Q. Did you make a memorandum of that alleged conversation with Dr. Hammer for your files? A. No.

Q. Until this alleged conversation between you and Dr. Hammer, all conversations and any correspondence that did occur after receiving the termination letter of July 16, 1965, were then Herbert—I withdraw that. I misspoke myself.

Prior to your receiving the letter of July 16, 1965, wasn't it a fact that it was Herbert and not you who carried on discussions in correspondence with Dr. Hammer concerning this Libyan matter? A. I should say he did most of them, but we both did.

Q. And can you mention a single instance in which you prior to July, 1965, that termination letter, had any conversation with Dr. Hammer about the Libyan matter, you personally? A. We had plenty, but I don't recall them at this time. We had conversations on this, on copper, on phosphates.

Q. You understand I asked you about the Libyan matter. That was in Herbert's hands, was it not? A. It was partially in Herbert's. It was in Herbert's (206) hands but I had consulted on it and Dr. Hammer spoke to me on it and I spoke to him.

Q. Do you recall any incident— A. I recall the meeting at his home in the Village.

Q. That was after July 16, 1965. My question is prior to that. A. Yes, there were conversations. I just don't recall what they were at the moment.

Q. You don't recall them. The only one that you do recall, then, after prior—withdrawn.

Despite the fact that Herbert was taken care, in the main, according to you— A. Despite the fact that what?

Q. I withdraw that. Let me go over a few of the letters and conversations that Herbert claimed he had

with you and ask you whether you participated in them at all and then see if that refreshes your recollection that it was always Herbert and not you who took up the Libyan matter except for this conversation you are talking about. Was it not Herbert rather than you who sent the DeRovin report to Dr. Hammer? That is correct, isn't it? A. Well, I gave it to Herbert to send.

Q. But Herbert sent it? A. I don't know.

(207) Q. A letter was sent by Herbert with respect to that, is that right? A. Well, if you show me the letter, I can answer it.

Q. I show you Exhibit 97 and ask you whether or not it wasn't Herbert Allen who forwarded the DeRovin report to Dr. Hammer. A. Yes.

Q. And when Dr. Hammer addressed his termination letter, as we call it, July 16, 1965, did he send it to Herbert, addressed personally to Herbert, or to you? A. You would have to show it to me. I don't recall.

Q. Let me show you Exhibit 124. It was to Herbert that letter was addressed, not you? A. It was sent to Herbert & Company, which included me.

Q. How did it begin? A. "Herbert Allen, Allen & Company."

Q. Read on. A. "I have sent the enclosed"—

Q. No, who is it addressed to? A. It is addressed to Herbert Allen of Allen & Company. Herbert received it.

Q. It says "Dear Herbert"? A. Yes.

(208) Q. Doesn't say "Dear Charlie"? A. It was received for the account of Allen & Company, but Herbert received it.

Q. I am asking to whom it was addressed. A. To Herbert.

Q. After this first alleged conversation with Dr. Hammer in August, 1965, regarding the termination letter, as you claim, do you claim you had any other conversa-

tion with Dr. Hammer about the termination letter? A. I don't know of any termination letter.

Q. Well, we are calling the July 16th—you may be right about that. I don't want to pin you to the word. I refer to the July 16, 1965, letter. A. What is the question?

Q. After this first alleged conversation in August, 1965, do you claim you had any other conversation with Dr. Hammer about that letter? A. About the letter?

Q. Yes. A. I don't recall.

Q. Did your attorneys ever confirm in writing their advice to you regarding Dr. Hammer's letter of July 16, 1965? A. I don't think so.

(209) Q. Did your attorneys ever write to Dr. Hammer advising him that his letter of July 16, 1965, was meaningless? A. I don't think so.

Q. Did your attorneys, as you claim, give you the advice, that it was meaningless, on the same day that the letter was received? A. Either that day or a day or so later. I am not completely clear on that. I think it was the same day, but I am not positive.

Q. At page 160 of your deposition were you asked the following question and did you make the following answer, and this refers to that conversation— A. This refers to what?

Q. To the conversation you claim you had in August, 1965, right after the July 16th letter.

"Q. And in the course of that conversation did you refer to the July 16th letter for a second time? A. I didn't refer to anything. Dr. Hammer referred to it and I told him the same story.

"Q. What did he say when you say he referred to it? What did he say to you? A. I don't recall that. All I know is what I told him.

"Q. Slowly, sir, please. Answer my question. You don't (210) recall what he said to you? A. No.

"Q. Do you recall what you said to him? A. Yes. I told him if we had something coming to us that we wanted it. If we didn't, we didn't want anything from him."

Does that refresh your recollection that you omitted that statement from your alleged conversation of August, 1965?

Mr. Greenspoon: Your Honor, I object to this because the witness was not testifying about the August conversation at this time and it is clear from this record and I don't think we should have misleading references here.

Mr. Nizer: Your Honor, I think it is clear that it is, but I won't pursue it except to leave the deposition here—

Mr. Greenspoon: This was the copper deal he was talking about.

The Court: When was this conversation, do you say, Mr. Greenspoon?

Mr. Greenspoon: I don't believe it ever got dated, your Honor, but it was not the first meeting. That was crystal clear. This was a subsequent meeting.

(211) The Court: It may be crystal clear to you but, frankly, it is not to me. The question was, what was the occasion of the visit, to talk about the July 16th letter?

Mr. VanVoorhis: Page 159, your Honor, the top, first line:

"Q. When was the next conversation in which the July 16th letter was referred to? A. I don't recall the exact date."

The Court: Move on to something else.

Mr. Nizer: At page 161, did you ever say anything more than that on any subsequent occasion, that is, right after, "If we are entitled to something, we wanted it, and if we

didn't, we didn't want anything from them," right after that—page 161:

"Q. Did you ever say anything more than that on any subsequent occasion? A. No. I repeated the same thing at the Madison Hotel in Washington to him.

"Q. What did he say in answer to that? A. Nothing.

"Q. Was he silent? A. He was silent.

"Q. He just was silent? (212) A. Yes.

"Q. Each time you said that? A. Yes."

Did you make those answers to those questions? A. Yes.

Q. Were they correct at the time you made them? A. Not completely. They were correct at the time I made them, but there are other times when we discussed—would you give me the question again? Are these statements correct?

Q. Every time you mentioned to him he was just silent, no matter what you mentioned to him? You want to hear the question again? A. Yes.

Mr. VanVoorhis: Read the question, please.

A. Are you referring to Washington?

Q. Just listen to the questions and answers and they include perhaps what you have in mind. Going back to 160, to give you a fair context:

"Q. Do you recall what you said to him"—

Mr. VanVoorhis: Let's get an answer to this question.

Mr. Nizer: I am reading it over to him for clarity sake.

(213) Mr. VanVoorhis: I thought the court reporter would do that.

Mr. Nizer: May I proceed?

Q. "Q. Do you recall what you said to him? A. Yes. I told him if we had something coming to us that we wanted

it," that is, to Dr. Hammer you said that, as you claim, "if we didn't, we didn't want anything from him.

"Q. That was the entirety of what you told him on that occasion about the July 16th letter? A. That's right.

"Q. Did you ever say anything more than that on any subsequent occasion? A. No. I repeated the same thing at the Madison Hotel in Washington to him.

"Q. What did he say in answer to that? A. Nothing.

"Q. Was he silent? A. He was silent.

"Q. He just was silent? A. Yes.

"Q. Each time you said that? A. Yes."

A. That's correct.

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(214) By Mr. Nizer:

Q. Before you met, as you claim, or telephoned, Dr. Hammer in August, 1965, had you discussed the July 16th, 1965, letter with Mr. Galic? A. Yes.

Q. When? A. Promptly after receiving it. He sent a wire (215) to me—a copy of the wire he sent to Occidental complaining, and I spoke to him right then and there.

Q. You testified yesterday that you had a second conversation with Dr. Hammer after the August, 1965, one in November, 1965. Do you recall that you so testified? A. Yes, I do.

Q. And you testified that on that occasion you discussed with him the letter of Mr. Galic to Herbert Allen, which is now P141, which refers to "I blocked the way"—"I blocked the way," meaning Galic blocked the concession. Do you remember that letter? A. Yes.

Q. I am just identifying it for you.

You said that that conversation with Dr. Hammer, as you claimed you had it, was to discuss what I will call the blocking letter. You discussed that with him, that subject matter, do you recall that, yesterday in your testimony? A. Do I recall what the purpose of the meeting was?

Q. That you testified on that occasion you discussed this blocking letter, I will call it. A. Yes.

Q. P141? (216) A. Right.

Q. Dated October 13, 1965? A. Right.

Q. Who do you say was present at that alleged conversation in November, 1965? A. I think Herbert and myself.

Q. And, of course, you claim Dr. Hammer? A. And Dr. Hammer.

Q. Did Herbert participate in the discussion with you and Dr. Hammer on this occasion? A. I don't recall.

Q. He was present throughout? A. Yes, he probably did, but I don't recall.

Q. Do you know, without recalling what he said— A. What he said?

Q. No. Without recalling what specifically he said, did he talk to Dr. Hammer about this blocking letter with you? A. What Herbert said or what I said?

Q. Perhaps I am not clear. I am sorry. Did Herbert as well as you talk to Dr. Hammer about this blocking letter? A. I think he did, but I am not sure, I don't recall.

Q. I read to you from Herbert Allen's deposition, (217) at page 184, discussing P141, which was then Exhibit 8, this letter of October 13, 1965:

"Q. Do you recall whether you," meaning Herbert, "ever discussed it with Dr. Hammer, that letter of October 13, 1965?"

Herbert's answer:

"A. I did not.

"Q. Did you ever advise Dr. Hammer of its contents? A. I didn't discuss it with Dr. Hammer."

Does that refresh your recollection— A. I said I don't recall.

Q. Which of these replies, that he never discussed it with Dr. Hammer or your version. that he was present and participated in some way, is correct? A. I don't recall.

Mr. VanVoorhis: That refers to the letter of October 13th.

Q. The corporation, Allen & Company, Incorporated, maintains its office at the same address as the Allen & Company partnership, doesn't it, 30 Broad Street? A. If I can speak for the corporation—

Q. What is your answer? A. I say, it is all right for me to speak for the corporation? I am not the corporation.

(218) The Court: There was no question asked about that. The question is, where does the corporation maintain its offices.

The Witness: Yes.

Q. The same? A. Yes.

Q. And the partnership also maintains its offices at the same place? A. Yes.

Q. And they are located at the same floor at 30 Broad Street, are they not? A. Well, there are two floors.

Q. Both the partnership and the corporation are on one floor of 30 Broad Street? A. Well, this was seven years ago and there have been quite a few changes since then. It is quite co-mingled.

Q. The officers and directors of the corporation, Allen & Co., Inc., were also partners of Allen & Company, the partnership, were they not? A. No.

Q. Which officers and directors were and which weren't, can you tell us quickly? Would that be too hard? A. Well, I think you have a copy of it.

(219) Q. Can you tell us— A. In 1966, I don't recall. I think we submitted a copy of it.

Q. Was Herbert Allen at that time chairman of the board of directors of the corporation? A. I don't recall.

Q. Was he also the chief executive officer of the corporation? A. I have nothing to do with the corporation.

Q. And you don't know whether your brother Herbert was the chairman of the board of that companuy, Allen & Co., Inc.? A. I don't recall. I think we submitted it to you.

Q. Did some of the various corporate officers and employees also perform services for the partnership? A. Are you talking about 1966?

Q. Yes. A. I don't remember. It is so many years ago. It is possible that they did.

Q. Is it not a fact that from October, 1964, to the beginning of 1967 the corporation payroll was met with funds supplied by the partnership? A. I don't know that.

Q. Did you hear your counsel at the deposition state (220) in fact that it was so and that Herbert Allen will confirm it? Didn't you ever see that or hear it? A. I just don't remember it.

Q. Did the partnership and the corporation have the same attorneys on May 11, 1966? The reason I picked that date, it is the date of the questionnaire for the $62,000,000 debenture issue and I want you to know why I picked that date.

Did the partnership and the corporation have the same attorneys on that date? A. Some same attorneys.

Q. Pardon? A. Some of the attorneys were the same.

Q. The same law firm? A. There was various law firms, but in some cases they had the same. I don't recall just who the law firms were at that time, outside of the Holtzmann firm.

Q. Did you make the following answer on your deposition to the following question, 259:

"Q. Is the Holtzmann firm also counsel for the corporation as well as to the partnership? A. Well, yes."

A. I just said that.

Q. Prior to the incorporation of Allen & Company, (221) Inc., did the partnership maintain a list of customers for new issues? A. I presume they did, but I don't know anything about it. It was not my end of the business.

Q. After Allen & Company was incorporated, was this list of customers made available to the corporation? A. I don't know.

Mr. Greenspoon: That is objected to as not relevant, your Honor.

The Court: Overruled.

A. I don't know.

Q. Does the corporation utilize this customers' list in selling defendant's debentures? A. I don't know.

Q. In June, 1966? Your answer is what? Do you want that repeated? A. It is possible, but I don't know exactly how it was used. I had nothing to do with the corporation.

Q. Prior to the defendant's debenture issue of 62,000,000 in June, 1966, did Dr. Hammer or Occidental ever have any business dealings with the corporation? A. I don't know.

(222) Q. Would it be fair to say, Mr. Allen, that the defendant, Occidental, had offered the $62 million debenture underwriting to the partnership in the first instance and that it was referred by you to the corporation? A. We were not—the company was not underwriting at that time.

Q. My question is did you therefore refer it? A. I don't recall.

Q. You don't recall one way or the other? A. We weren't in that business any more.

The Court: Who is "we"?

The Witness: Allen & Co.

The Court: The partnership?

The Witness: Yes. The purpose of the corporation was to do the underwritings.

Q. Who arranged for the debenture underwriting of $62 million on behalf of Occidental? A. I don't know.

Q. You don't know that either? A. No, it was an Allen & Company—

Q. You didn't hear about the 62 million debenture at any time? A. It was Allen & Company's business. I imagine (223) Dr. Hammer arranged. I was not part of it.

Q. Did your brother and you consult about these matters at any time? A. Did we consult?

Q. Yes. A. We probably did, but I don't recall at the minute.

Q. You know, don't you, that this debenture issue was proffered in 1966, it was initiated in 1966, long after the termination letter of July 16, 1965, you know that don't you? A. I don't know of any termination letter.

Q. Well, let's call it letter of—when I say "termination" I don't mean to prejudice you. I refer to it as shorthand, July 16, 1965 letter was long before the matter was initiated for a 62 million debenture bond issue. You don't know that, do you? A. You mean was the issue after that letter?

Q. Yes. A. Yes.

Q. Long after. And wasn't it a fact— A. It wasn't long after, it was only eleven months after.

Q. All right. In 1966, when that debenture (224) issue was being protected to be developed, that was months after concessions had already been announced and awarded to Occidental in Libya, you knew that too, didn't you? A. It was several months after.

Q. Yes. A. Yes.

Q. And were you aware of the fact that in 1966 that the SEC rules and the statute required the disclosure of

all material relationships between an underwriter and an issuer, were you aware of that, sir, at that time?

Mr. Greenspoon: I object to this, your Honor. This witness is not competent to answer questions of law.

The Court: It isn't a question of law. He was asked whether or not he was aware of the requirement.

Overruled.

A. I was not aware.

Mr. Greenspoon: It is so vague, I object to the form. I don't know to what he is referring, Mr. Nizer.

The Court: That is a different objection. Be more specific in your question then.

(225) Mr. Nizer: I am not sure I heard it. I want to comply.

The Court: You were talking with co-counsel.

Mr. Nizer: I am sorry.

The Court: Go back and read the colloquy. Be more specific with respect to your inquiry as to what knowledge the witness had.

Q. You are familiar, are you not, with the fact that the SEC and statutes relating to debenture issues or issues generally required that all material relationships which the underwriter has with the registrant, that is, with the issuer, shall be disclosed in the questionnaire, is that correct? A. That is correct.

Q. It is incorrect?

The Court: I understood the witness to say it is correct.

Mr. Nizer: All right, correct, I accept the answer.

The Court: What is your objection?

Mr. VanVoorhis: There is a point which I think should be registered at this time for the record. It isn't really an objection to the particular question and answer.

(226) But we submit that the only relevance which this line of questioning can have is to ascertain whether or not either this registration questionnaire or prospectus was an admission against interest on the part of Allen & Company in this lawsuit.

We would like to point out that there is no question or issue here of violation of any SEC rule or of any controversy between purchasers of bonds and that the sole issue which is being developed with regard to these documents by counsel in cross examining, which is admissible, is relative to the question of whether or not it is an admission against interest as applied to this lawsuit.

Mr. Nizer: Your Honor, we claim that this impeaches the—

Mr. VanVoorhis: Incidentally, I think the questionnaire is not an SEC document.

Mr. Nizer: We claim that the conduct of the defendant was the truth at the time when it said it had no material relationship with us.

* * *

(227) Mr. Nizer: It is an impeachment of all these conversations he has testified.

The Court: You are arguing it is for impeachment purposes?

Mr. Nizer: Yes, sir. Obviously if the answer is in the qeustionnaire and the prospectus—

The Court: Then you say there are two grounds you are urging, both for impeachment purposes and also as an admission against interest?

Mr. Nizer: Yes, sir.

The Court: So you agree with your adversary at least to the extent of 50 per cent on this issue.

Mr. Nizer: Yes, your Honor.

May I continue, please?

The Witness: May I say, correct this last, I don't understand the legal terms he is talking about.

The Court: If you didn't understand the question you should not have answered it and I am going to suggest to you, if there is any question which you do not understand, please do not answer the question and say that it is unclear to you and the question will be reframed. (228) Now put the question again that was put to the witness before and—

The Witness: Let me see if I understand it.

Mr. VanVoorhis: May we then for the moment have the answer stricken out?

The Court: No, the answer will stand.

Mr. VanVoorhis: I mean simply to make sure that the witness understood what he was saying, that was all.

The Court: There was nothing to indicate he didn't understand that. I am suggesting from this point on if he doesn't, to say so.

Mr. Nizer: Would you be good enough to read my question back so he has it precisely as it was. I think that is what the witness wants.

(Record read.)

The Witness: I don't acknowledge the legal part in the beginning. It is correct that I acknowledge that a questionnaire is submitted but I don't know the legal—the different statutes that he is talking about in there.

Q. Well, did you make the following answer to precisely the same question in your deposition, at Page 206, when you were asked the following question:

"Q. You are also familiar, are you not, with the (229) fact that the SEC and statutes relating to these matters generally require that all material relationships which the underwriter has with the registrant, with the issuer, shall be disclosed in the questionnaire."

Is that correct? A. Yes. Well, I still come to the same thing, I don't know what the statutes mean and I did answer.

Q. You stand by that? A. I did answer yes, but I don't know what the statutes mean.

Q. Isn't it a fact that your companies, through the past years before the incorporation, and subsequently after the incorporation, handled hundreds and maybe over the years thousands of issues? A. That's correct.

Q. And didn't you become familiar therefrom with the fact that there was first a questionnaire that had to be submitted and thereafter in the prospectus— A. No.

Q. —there had to be disclosure of any material relationship between the issuer and the underwriter? A. I am not familiar. That was not—in my testimony I said that was not my end of the business. We (230) had attorneys for that and our office manager took care of that. I don't know what went in a questionnaire or what was asked or anything. They knew what the business was and they took care of it.

I had nothing to do with it.

Q. Is it a fact, Mr. Allen, that Dr. Hammer discussed with you, you, not Herbert, the various possibilities of having a debenture issue for the Occidental Corporation before that issue was actually projected? A. No.

Q. He took it up with you, didn't he, personally? A. No.

Q. No? A. Not that I recall.

Q. Would you say you are sure of that or you are not sure? A. Well, you are asking me something seven years ago.

Q. Yes, I am and you have testified to many things. A. I would say no. My answer is no.

Q. So far as you can say now, Dr. Hammer never discussed this subject with you, only with Herbert, is that it? (231) A. I don't recall.

Q. You don't recall.

Mr. Nizer: Is there any objection if I offer Exhibit 18—no, it is now marked 80.

Mr. Greenspoon: That is objected to.

Mr. Nizer: The questionnaire, your Honor, I offer that in evidence.

Mr. VanVoorhis: We object to it, your Honor—

Mr. Nizer: And it is signed, of course, by corporation Allen & Company, Inc.

Mr. VanVoorhis: —on the ground that it has not been connected with this witness or with Allen & Company, and it is not binding on the plaintiff. There is nothing thus far developed to indicate any connection between this witness and this document, nor has it been brought home to him in any manner.

Mr. Nizer: Your Honor, the representation that none of the officers or director of the corporation have any material relationship with the issuer includes Mr. Charles Allen, Mr. Herbert Allen, who were of course members of the partnership as well. Consequently the link has been completely established here and they must reveal any relationship between any director or officer, which are (232) the same people.

Mr. VanVoorhis: No foundation has been laid for its introduction.

Mr. Nizer: In the pretrial order—I don't mean to interrupt your Honor while reading, but I think this will help. Paragraph 29 of the pretrial order stipulates as follows:

Charles Allen, Jr., for Plaintiff, Cross

"With respect to said registration of debentures Allen & Company, Inc. signed a questionnaire form dated May 11, 1966, wherein it said, 'Neither we nor any of our directors, officers or partners have a material relationship with the company. 30. Plaintiff's counsel knew of all of its affairs with Occidental' "—there is an asterisk there at the bottom. "Plaintiff contends in addition to subject to materiality and relevancy, this is subject to the attorney-client privilege. Objection as raised on Page 211 of the deposition of Charles Allen. Defendant contends that the attorney-client privilege is inapplicable or waived on deposition or otherwise."

Now 31, "On May 11, 1966, Herbert Allen was chairman of the board of directors of Allen & Company, Inc., Charles Allen, Jr. and Herbert A. Allen were directors, C. Robert Allen was executive vice-president, and Herbert (233) A. Allen was a vice-president thereof.

"32. Allen & Company, Inc. did not sign any other questionnaire or change the statement quoted in Item 29 in any document signed by it in relation to the said offering of debentures.

"33. Charles Allen did not, after May 11, 1966, ask Allen & Co. Inc. to file an amended underwriter's questionnaire so as to indicate there was a material relationship of plaintiff.

"34. Allen & Company, Inc. did not advise its customers of plaintiff's claimed interest in said Libyan oil concessions either prior or subsequent to the purchase by said customers of said debentures."

That is all I will read on that subject.

Charles Allen, Jr., for Plaintiff, Cross

Mr. VanVoorhis: Your Honor, we interpose all the objections stated in the footnote on Page 8, and of course these facts or statements in the pretrial order are subject to objection as to the materiality, competency, relevance, and I would say in support of those objections that this is not an action brought either by the other underwriters against this Allen & Company, Inc. nor is it an action which involves in any respect any of the purchasers of bonds of this issuer, and the sole relevance we contend of this line of cross examination relates to (234) whether or not this was an admission against interest by the partnership, more specifically, by Charles Allen and Herbert Allen who were its managing partners.

We again object to the introduction in evidence of this questionnaire on the basis that it has not been brought home to this witness or to the partnership of Allen & Company, the plaintiff, and that the purpose for which it is being offered does not bear on the issues in this action.

The Court: Well, on the basis of this argument, I think I ought to reconsider having received in evidence quite a number of documents yesterday which defense counsel argued were not brought home to the defendant, and I indicated that under my rather liberal policy of receiving all evidence that may touch upon that as an issue I would receive it, even though I might, were it in a jury case ruled otherwise.

In this case, in this instance, you are now advancing the argument "It is not brought home to the plaintiffs," distinguishing the plaintiffs as a partnership from a corporation, the circumstances of which incorporation were referred to by the witness."

Charles Allen, Jr., for Plaintiff, Cross

Isn't that a rather far-fetched argument when you are suggesting yourself that the evidence may be (235) relevant as an admission against interest if in fact the plaintiffs were aware of this statement? How can you argue against that?

Mr. VanVoorhis: That is the only possible—

The Court: Suppose I take it on that ground?

Mr. VanVoorhis: I don't think that any foundation has been laid for it on that ground—your Honor has referred to offers of evidence which were made yesterday which were taken subject to motion to strike.

The Court: I also indicated that while I was—

Mr. VanVoorhis: I don't think that is quite parallel to—

The Court: My statement was I was taking all these matters subject to a motion to strike, that there was a very great likelihood that motion to strike would not be acted upon favorably in terms of the objector, and that I would consider whatever was in the case assuming always it was relevant and material to the issues in the case.

Now, on your own argument, which you have just made and which you referred to previously, this statement is being offered as an admission against interest. If the plaintiff had knowledge of it and if the fact-finder (236) should find that they had knowledge of it, why isn't it relevant?

Mr. VanVoorhis: There is nothing to indicate that they did have knowledge of it.

The Court: Well, isn't that for the trier of fact to decide in terms of the relationship of the plaintiffs, who as I understand it are a partnership or claims it is a partnership, to use a correct grammatical term, and the partnership's relationship to the corporation?

Mr. VanVoorhis: May I speak?

Charles Allen, Jr., for Plaintiff, Cross

The Court: I could almost cite cases that you wrote on this subject.

Mr. VanVoorhis: I am glad your Honor said "almost." I don't recall.

The Court: My memory is not as good as it used to be. In other days I would have given you the name of the case and the citation, but I don't test myself these days any more.

Mr. VanVoorhis: I suspect those cases, whatever they may be, would relate to whether the fact that this questionnaire was signed by Mr. Stern, I think, a representative of the corporation, even if he were a representative of the partnership, which it wasn't here, (237) I suspect that if that were so, then if the action was based on that document, then I would think that whether or not the officers, director or partners of a partnership, which is somewhat interrelated, would have, I think, objections on that basis would have a foundation, but this is not an action in any manner based on this document, and the document is not per se any admission against interest unless it is in some manner brought to the attention of these gentlemen.

They were not the lead underwriter. Lehman Bros. was the lead underwriter here.

The Court: Isn't that a matter to be developed by those who allegedly have knowledge of this? At least the defendants claim plaintiffs had knowledge of this.

Mr. VanVoorhis: I would have no objection, within the limits which I previously stated.

The Court: Mr. Nizer goes beyond it and he contends it is—

Mr. VanVoorhis: He was questioning—

The Court: —impeachment.

Mr. VanVoorhis: We merely suggest and take the position that the mere existence of this document doesn't establish that they knew about it.

Charles Allen, Jr., for Plaintiff, Cross

(238) The Court: Isn't that for the fact-finder to determine whether or not they knew about it? The only issue now is whether it is to be received in evidence. This doesn't mean that there is a determination that either of the plaintiffs knew of the statement so that they can be taxed with it as admission against interest.

Wouldn't you agree with that?

Mr. VanVoorhis: I think that is correct. I wanted to have our position made clear on the record.

The Court: And also as I understood one of the questions, although there hasn't been any development of it, the contention is made that originally this underwriting proposal was made to the partnership, and for some reason of relationship between the partnership and the corporation, eventually it went over to the corporation instead of to the partnership. Evidently because the partnership no longer was engaged in the underwriting business.

These are all facts that I assume will be developed and if so they may have a bearing on whether or not the individual plaintiffs knew about it.

Let's go on with it. I think we are all clear on it.

I think you will agree the basis on which it is (239) to be received as you yourself indicated is correct.

(Defendant's Exhibit D for identification was received in evidence.)

By Mr. Nizer:

Q. Now, Mr. Allen, at all times you were a director of Allen & Company, Inc. were you not? A. I don't know that. I took no part in the activities of Allen &

Company, Inc. I am not aware of when I became a director and when I quit as a director.

Q. Did you ever become a director? A. Yes.

Q. I show you a list of directors submitted by your counsel pursuant to an understanding that we wouldn't have to go into this by examining the books. I ask you if you accept this list as accurate as of 1966? A. There is no date on that.

Q. No, I am asking you. A. I don't know.

Q. Do you see your name on there as a director? A. I see my name on it, but there is no date on it.

Mr. Nizer: Will counsel concede that this was part of the understanding that you would give us a (240) list of the directors of the corporation for the year of 1966 and for that matter for other years, but certainly '66.

Mr. Greenspoon: Yes. We concede, your Honor, that we delivered this pursuant to request. I think this covers directors from September '64 through December 31, '66, I believe, or thereabouts, in that period.

Mr. Nizer: All right.

Mr. Greenspoon: We have no objection.

Mr. Nizer: I offer this list in evidence.

(Defendant Exhibit D10 for identificaiton was received in evidence.)

The Court: What is D10, so we have the record correct?

Mr. Nizer: D10 is the list of directors of Allen, Inc. from '64 to '66.

Mr. Greenspoon: From September '64 through December 31, '66.

Mr. Nizer: And I offer it because Charles Allen was a director.

The Court: Looking at you, Mr. Greenspoon. I may be wrong but I think you gave a different date in 1964. Before you said April, I believe.

(241) Mr. Greenspoon: No, I said the corporation was formed in April. These directors were in the first election September 1964.

The Court: To December 1966 they served?

Mr. Greenspoon: Yes, your Honor.

The Court: All right. And the directors include the witness Herbert Allen, who is described also as chairman of the board, as well as a director and Charles Allen, Jr.

Mr. Nizer: This is Charles Allen.

The Court: And they are two plaintiffs comprising the partnership in this suit.

By Mr. Nizer:

Q. And did you consider that the $62 million debenture issue was also to help finance the Libyan project which we have been talking about?

Mr. VanVoorhis: Objection to that as to the form of the question, did he consider.

The Court: Sustained as to form.

Mr. Nizer: I accept that.

Q. Did you know at the time of the debenture of $62 million that part of the moneys that were to be raised were to be expended for the Libyan project which we have been discussing?

(242) Mr. VanVoorhis: Same objection, your Honor, there are conversations relative to it or some documentary evidence.

Mr. Nizer: Asking for his knowledge.

The Court: Overruled.

The Witness: What is the question now?

Q. Did you know? A. That it was for Libya?

(243) Q. That was for Libya? A. We assume it was. After all we were carrying out our part of the contract.

Mr. Nizer: Move to strike out that answer.

Charles Allen, Jr., for Plaintiff, Cross

Q. My question is not whether you assumed anything. A. Yes, we do.

Q. Did you know? A. Did I know?

Q. Yes, you, you. A. I didn't read the prospectus.

Mr. Nizer: Move to strike that out as not responsive.

The Court: Strike it out.

Q. Did you know, is my question, you Charles Allen, Jr., did you know that part of the $62,000,000 debenture issue that was being issued by the corporation Allen & Co., Inc. had was to be spent for the development and the project of Libya about which we are now discussing? Did you know that in '66? A. Yes.

Mr. Nizer: I also offer in evidence D9 and D14. Is there any objection to those, sir?

Mr. Greenspoon: No objection.

Mr. Nizer: Can you supply the dates that this (244) referred to?

Mr. Greenspoon: On D9, your Honor, I believe that this covers the period, the same period, September, '64, when officers were first elected—no, I am wrong about that because Herbert Allen was —A. Allen was not the president in 1964. I have to check those dates. I don't remember what we told you at the time.

Mr. Nizer: Will you check it but in the meantime so as to indicate its relevance, this was the list certainly as of '66 when the issue was made, is that right?

Mr. Greenspoon: I think that's so, yes.

Mr. Nizer: Is that true of D14?

Mr. Greenspoon: As of November 27, '67. I think they were the same stockholders.

Mr. Nizer: I offer D9 and D14 in evidence.

(Defendant's Exhibit D9 and D14 received in evidence.)

Charles Allen, Jr., for Plaintiff, Cross

Mr. VanVoorhis: We probably should call your Honor's attention—I didn't mean to interrupt you—call your Honor's attention to the fact that the president listed as Herbert A. Allen is son of the Herbert Allen who is here and is not the plaintiff in this suit. Merely for the record, we want to clear it.

By Mr. Nizer:

(245) Q. Mr. Allen, is not a fact that on May 11, 1966, which is the date of the underwriter's questionnaire now in evidence a majority of the capital stock of Allen & Co., Inc. had was owned collectively by your children and the children of your brother Herbert, is that correct? A. I think that's correct.

The Court: Before you go ahead, I have just looked at this Defendant's Exhibit D9. There is a reference here to a secretary James W. Deer. Is James W. Deer the man with whom you said you conferred following the receipt of the letter of July 16, 1965?

The Witness: Yes. Yes.

The Court: Now, did you offer Defendant's Exhibit D14?

Mr. Nizer: Yes.

The Court: What is D14? That's the stockholders' list?

Mr. Nizer: Yes, your Honor.

The Court: And you just asked the question about who owned the majority of the stock.

Mr. Nizer: Yes.

The Court: All right.

Q. Is it a fact that the five children who owned the stock in the corporation were also the same five (246) children who are general and limited partners of the plaintiff on May 11, 1966, when the questionnaire is dated? A. That's correct.

Q. Would it also be correct to say that on May 11, 1966, that all of the stock in the corporation, Allen & Co., Inc. had, which was not owned by the children of your two families, Charles' and yours, were owned by you and your brother? A. We didn't own any of the stock.

Q. Is it a fact that the interest in the partnership, Allen & Co., with the exception of that which the children of Charles Allen and Herbert Allen owned was owned entirely by you and your brother Herbert? A. That's correct.

Mr. Greenspoon: Your Honor, I don't know whether he is talking about the corporation or the partnership.

Mr. Nizer: I just said partnership.

Mr. Greenspoon: I thought he said company.

Mr. Nizer: I said the partnership.

The Court: Read the question to the witness or reframe the question again please so there won't be any issue about it.

(247) Mr. Nizer, will you please put the question again.

Mr. Nizer: Oh, yes.

Q. Is it a fact that with the exception of the interests which your children and Herbert's children had in the partnership, Allen & Co., that all of the rest of that interest was owned by you personally and by Herbert personally? A. That's correct.

Q. And that would be true as of May 11, 1966, the date of the questionnaire? A. That's correct.

Q. And would it be correct to say that all of the shareholders of the corporation, excluding your family and the family of your brother Herbert were previously associated and employed by the partnership in one capacity or another? A. I couldn't answer that. I don't know whether that is a hundred per cent correct or not.

Q. To what extent would you say, would it be substantially— A. I don't know. I think it would be substantially so, but I don't know exactly.

Charles Allen, Jr., for Plaintiff, Cross

Q. If I showed you Exhibit D14, which is the list of stockholders—

(248) Mr. VanVoorhis: For the sake of the record, your Honor, may it appear that this is all received subject to the objection which I stated at length some time ago and which your Honor has previously ruled? I don't wish to go into it.

The Court: I thought you were in agreement that it was relevant on the issue as to whether or not the statement could be considered as an admission against interest.

Mr. VanVoorhis: I am in agreement as to the admissibility of any cross-examination which is related to whether or not Charles and Herbert Allen knew about this questionnaire and this prospectus, any aspect which might perhaps be urged that it was an admission against interest. We don't concede that it was an admission against interest. We contest this. But somewhere there is a line to be drawn, and I think that this falls on the other side of the line. I believe your Honor has already ruled on the substance of it, so I don't propose to—

The Court: I was just trying to suggest, I assume that it is elemental that once knowledge is usually determined by all of the surrounding facts and circumstances.

Mr. Nizer: May I proceed, sir?

(249) The Court: Yes.

Q. I show you D14, the list of stockholders of the corporation and ask you whether it isn't a fact that all of them at some time or another had been employees of the partnership before they came into the corporation?

Mr. Greenspoon: That's objected to as irrelevant, your Honor.

The Court: Overruled.

A. I don't know all of the names, but substantially so.

Q. All right, sir. A. Had been what, did you say partners before they came in the corporation?

Q. No, no, had been employed. A. Yes, substantially so.

Q. Now, you have observed that the signature for Allen & Co., Inc. on the questionnaire of May 11th signed in for the corporation is Mr. Stern; you have observed that? A. I don't recall.

Q. Well, let's take it for granted it is on there, on the exhibit. A. Okay.

(250) Q. And is he one of those for whom the partnership paid the salaries of corporate people at various times? A. I don't know.

Q. Well, I read the following stipulation of counsel in that respect. A. It is possible, but I don't recall.

Q. I see. At page 426, 427, Greenspoon—Mr. Greenspoon and Herbert Allen stated, "Mr. Greenspoon: This is the story on Mr. Stern. Mr. Stern from 1964, October to the beginning of 1967 was paid by the partnership, and the corporation then repaid the partnership and the reason that it was done that way at that time was because the partnership did not set up its payroll accounts until 1967, and Mr. Herbert Allen will confirm that if you wish him to."

And then followed questions after Mr. Herbert Allen confirmed that.

"Q. Who paid all the other salaries of the corporation employees between '64 and '67?

"Mr. Greenspoon: The same thing applies I believe, is that correct?

"The Witness: I don't know.

"Mr. Greenspoon: We don't know and we don't think you are entitled to it. You asked it about Stern (251) and we have told you but I believe it happens to be the same for everybody, frankly."

The Court: May I see what you just read from? It was a statement on the record during the course of the deposition?

Mr. Nizer: Yes, page 426 of Herbert Allen's deposition. We will hand it up to you.

The Court: The clerk has a copy.

Mr. Nizer: Herbert Allen, page 426 and 27.

The Court: Mr. Greenspoon, the reason I asked for it, at page 426 you made the statement "This is the story on Mr. Stern. Mr. Stern from 1964, October to the beginning of 1967 was paid by the partnership and the corporation then repaid the partnership and the reason that it was done that way at that time was because the partnership did not set up its own payroll accounts until 1967." That doesn't seem right to me.

Mr. Greenspoon: It is an error, your Honor, it should read the corporation.

The Court: The corporation. It didn't sound right to me.

Mr. Nizer: That's correct.

Mr. Greenspoon: It is the corporation.

Mr. Nizer: What is the number of questionnaire (252) so I can refer to it more easily. D8.

Q. Was the questionnaire prepared by your attorneys either for the corporation or the partnership, the same counsel, do you know? A. You are asking me two questions. I don't know.

Q. You say you don't know. A. I don't know.

Q. Was the questionnaire reviewed by counsel before it was submitted by Allen & Co., the corporation? A. By who?

Q. By counsel for the corporation, who is the same counsel for the partnership. A. I don't know.

Q. You say you don't know? A. I don't know.

Q. Would it be fair to say that in May, 1966, your attorneys had full knowledge of your affairs with Occidental regarding Libya? A. No.

Q. Didn't you testify as follows at page 212 to the opposite effect?

"Q. Were you ever asked as a director by anyone in Allen & Co., Incorporated as to whether you had any material relationship with the company, namely Occidental (253) Petroleum Corporation? A. I don't recall.

Q. You mean you may have been asked? A. I just don't recall.

Q. You don't recall one way or another? A. These things are done by our attorney. There wouldn't be anybody in Allen & Co. to ask. When an undewriting comes it went to their attorney and their attorney would have handled it.

Q. Were you asked by anybody, an attorney or not, a a director, whether you had any material relationship? A. Our attorneys knew of all our affairs with Occidental. They didn't have to ask me."

Did you make those answers? A. If we did it is not accurate. I don't recall.

Q. Did you correct them? A. I don't think I answered that way but I can't remember.

Q. Do you doubt that the stenographer— A. Our attorneys don't know about all our affairs.

Q. Do you doubt the accuracy of the stenographic report? A. Well, if it is there it is wrong, because it is not so.

(254) Q. Did you sign this deposition? A. I didn't read it, I signed it.

Q. Was it reviewed by your counsel before you signed it? A. I don't know.

Mr. Greenspoon: I object to this, your Honor.

Q. To your knowledge.

The Court: Overruled.

Q. You say that you never read the deposition before you signed it? A. That's correct.

Q. Didn't you make a whole series of corrections? A. Did I?

Q. Yes, before you signed it. Weren't there corrections made of various answers? A. There may have been made, I don't know. I don't recall whether I read it or not.

Q. Now you say you don't recall. A. I don't recall whether I read it or not. Will you go back to the question of the attorneys, I think I have an explanation for it. Will you read it back again what the question was.

Q. I will come back to it but let me finish it for a moment, sir. (255) A. You are going around so much I can't concentrate.

Q. I regret that. I don't want to in any way confuse you, Mr. Allen, I assure you. I know the burden that this is, but you are suing us.

Did you, when you made these changes give explanations of the changes? Were they submitted to you, the explanation for changes? A. I don't recall.

Q. I show you attached to your deposition a list of changes typewritten in with each page and line an explanation for some of those changes. Does that refresh your recollection— A. No.

Q. —that you read the deposition? A. No.

Q. Who made— A. I don't know.

Q. Who made the changes then before you signed them? A. I imagine our attorneys.

Q. Without consulting you as far as you recollect? A. I didn't say that, I just don't recall.

Q. Did they talk to you at all about making changes? (256) Your sworn testimony. A. They probably did, but I don't recall.

Q. Did you look at any pages of your testimony with respect to the changes noted on this list? A. I probably did but I don't recall.

Q. Now among the changes that you sought to make then, whether your attorneys brought them to your attention or otherwise, did you ever change the answer? A. Did I see that?

Q. The answer answer. A. Could I see that? I want to see where it is. I want to read it.

Mr. Nizer: I will be glad to. Page 212. What I read to you, Mr. Allen, you can take your time and read it, if you wish, is on page 212.

From here to here is where I read, sir. From here to here (indicating)

A. You didn't read this to me.

Q. Pardon? A. You never read this to me.

Q. Oh, yes. A. You never read this to me.

Q. I read exactly that, were you ever asked as a director by anyone at Allen & Co., Incorporated (257) as to whether you had any material relationship with the company namely Occidental Petroleum.

I don't recall.

I read all of that. A. I don't recall you asking that.

Q. That was only a few moments ago, sir. I read right down to here and you said that's not correct after I read it. A. This is the question?

Q. The last one, yes. A. Yes, that's correct.

Q. "Our attorneys knew of all of our affairs with Occidental. They didn't have to ask me." A. That's not on the completed affairs is what that means.

Q. You mean if a venture was in the process of developing to its finality your attorneys knew nothing about it? A. There were plenty of ventures that our attorneys know nothing about. These are not ventures that have gone to finality.

Q. Well, but it was— A. They don't know every—our attorneys did not know every venture that we are in.
(257a) Q. Well, but I didn't ask you generally about other ventures. I asked you about the questionnaire of May 11th. A. Yes, but the way this is interpreted.
(258) Q. These questions refer to a matter that was not yet concluded? A. That is correct.

Q. So they did know, when I asked you about this— A. Our attorneys knew of—

Q. Of all of—

Mr. VanVoorhis: Please let him answer.

Q. I am reading it to you, sir. Do you want to say something without my asking a question? What do you want to say to his Honor? A. I don't want to say anything to his Honor.

Q. "Were you asked by anybody, by an attorney or not, as a director, whether you had any material relationship? A. Our attorneys knew of all of our affairs with Occidental. They didn't have to ask me."

You say that is a correct answer? A. Yes. What's wrong with that?

Q. Nothing, sir, nothing at all. They knew of all of our affairs that meant anything.

Q. And an issue of $61,000,000 didn't mean anything?

The Court: $62,000,000.

A. That was the corporation. I had nothing to do
(259) with the issue.

Q. You didn't know there was an issue of $62,000,000 to be issued by Allen & Company? A. Allen & Company had nothing to do with it and I had nothing to do with it. I was not an active director at the time.

Q. Without being a director, sir, I will accept— A. The corporation was on its own.

Q. I am sure that that is so, that they are operated through other sources. A. I knew there was going to be an issue but I had nothing to do with the issue.

Charles Allen, Jr., for Plaintiff, Cross

Q. You knew there would be an issue for Occidental of $62,000,000 and you knew that that was with Dr. Hammer, who was your friend at that time? A. That is correct.

Q. And he had talked to you about that? A. He had not talked to me about it.

Q. Never mentioned it to you? A. I don't know, I don't recall.

The Court: I think we will take our luncheon recess at this point.

Off the record.

(Discussion off the record.)

(Luncheon recess)

* * *

(260) *Cross Examination Continued by Mr. Nizer:*

Q. And, Mr. Allen, the chairman of the board, of course, was your brother Herbert, right? A. Are you asking me?

Q. Yes. A. Yes.

Mr. Nizer: The other sentence, particularly, where he calls your Honor's attention respectfully is Section 5: "The chairman of the board of directors shall be the chief executive officer of the corporation and shall preside at all meetings of the shareholders and of (261) the Board of directors."

Mr. Greenspoon: Are you referring to the whole thing?

Mr. Nizer: Yes.

Mr. Greenspoon: We have no objection.

(Defendant's Exhibit D15 received in evidence.)

Mr. Greenspoon: Your Honor, this morning the question arose about the list of officers and the

effective date of that list of officers, and I said at that time I was not sure.

The effective date of that list of officers, which is Exhibit D10, I believe, is 1967. The essential difference is that in 1966 Herbert A. Allen, the son of Herbert Allen, Sr., was not the president. The president was F. W. Harder, and Herbert A. Allen did not become president until 1967.

Mr. Nizer: What office did Herbert Allen hold prior to that, Mr. Greenspoon?

Mr. Greenspoon: Prior to what date?

Mr. Nizer: Prior to 1967.

Mr. Greenspoon: Herbert Allen, Sr. or Junior?

Mr. Nizer: Senior.

Mr. Greenspoon: Herbert Allen, Sr. was chairman, and prior to 1967 Herbert A. Allen was a vice president.

(262) Mr. Nizer: And he was also chairman of the board?

Mr. Greenspoon: No, no. It is two different Allens.

The Court: You better go back over it again. You were referring before to Herbert A. Allen, Jr.?

Mr. Greenspoon: Yes.

The Court: Who is the son of Herbert Allen, one of the plaintiffs in this case?

Mr. Greenspoon: Right, sir.

The Court: Herbert Allen, one of the plaintiffs in this case, was chairman of the board of Allen & Company, Inc.?

Mr. Greenspoon: Right, sir.

The Court: Over what period of time was he chairman of the board?

Mr. Greenspoon: He was chairman from October, 1964, when they had their first election, right through, so far as I know, until today.

The Court: As far as this case is concerned, he was chairman of the board and that means he was a director and officer of Allen & Company, Inc. at the time that that exhibit which contains the reference as to which there was discussion this morning was made?

Mr. Greenspoon: Yes.

(263) The Court: That is in May, 1966. That is the exhibit I am referring to.

Mr. Greenspoon: He was chairman of the board in May, 1966?

Mr. VanVoorhis: I think he was not an officer, your Honor, except as to powers which may have been vested in the chairman of the board.

The Court: I beg your pardon?

Mr. VanVoorhis: I think he was not an officer, your Honor, except as the chairman of the board may be perhaps so described.

The Court: Well, as chairman of the board he was also a director, was he not?

Mr. VanVoorhis: That's right.

The Court: Was he an officer at the same time?

Mr. VanVoorhis: No.

The Court: He was chairman of the board and he was a director in May, 1966?

Mr. VanVoorhis: Correct.

Mr. Nizer: But the by-laws says the chief executive officer too, doesn't it? Didn't I just read that in?

Mr. Greenspoon: That is so, and in his absence the vice chairman is the chief executive. That's correct, (264) the chairman is an officer.

The Court: There shouldn't be any controversy, really, about this.

Charles Allen, Jr., for Plaintiff, Cross

By Mr. Nizer:

Q. Mr. Allen, in the questionnaire, which is D8—the questionnaire which I showed you before the recess—there is the statement the representation in it. "Neither we nor any of our directors, officers or partners have a material relationship with the company." That means Occidental, in this case, and "we" is the officers and directors of the corporation, Allen & Company, Incorporated, "nor have we or any of them been during the last three years an officer or director of the company or an associate as defined in Rule 405 of the Securities Exchange Commission or of any of its officers or directors or of any person who to our knowledge owned of record or beneficially as of March 31, 1966, more than 10 per cent of any class of voting securities of the company."

Referring back to the early part of that statement in your prospectus—I misspoke—of the questionnaire, D8, "Neither we nor any of our directors, officers or partners have a material relationship with the company," was that an accurate representation in the questionnaire? A. I don't know anything about the questionnaire. (265) I never saw one.

Q. Haven't you replied in your deposition when you were asked if that was an accurate statement? A. I don't recall.

Q. Let me read to you from page 233:

"Q. Was this an accurate representation in the underwriter's questionnaire when it said, 'Neither we nor any of our directors, officers or partners had a material relationship with the company'? Was that an accurate statement, to your knowledge, as a director at the time it was made? A. I don't think I could answer that, I don't think I could answer to that. I think that it is material as of today and it wasn't material then."

Now, reading immediately preceding that, to give you the full context—

Mr. VanVoorhis: May I—
Mr. Nizer: Top of page 233, Judge.

Q. "Q. Was that an accurate statement, according to your knowledge as a director? A. It is all according to what you call material."

I will skip the comment of Mr. Greenspoon.

"A. It is accurate.
"Q. Was it accurate? (266) A. No, not as of today.

"Mr. Greenspoon: No, no.

"A. Did we have any material relationship with Occidental? Yes, we did," and written in on top, "It was accurate," which was a change made in your testimony.

Did you make those answers and that change in your answer? A. I would have to read the testimony.
Q. Well, I have just read it to you. A. I would like to read before and after.
Q. All right, sir. First, will you answer, and I will let you read anything. Before I show this to you so you can read anything you wish, I would like an answer to this, if you can make it, please.
Your answer, at line 13, "Did we have any material relationship with Occidental?"—this is your answer, you put the question—"Yes, we did," and written in top is "It was accurate," and your initials, CA, Jr.—first, I ask you did you make that answer and are these the initials of your change?

Mr. VanVoorhis: Just a moment, please. The plaintiff's position with respect to this is that unless knowledge of the questionnaire is traced to this witness (267) these questions asking for his opinion concerning what is material or was material

at the time in question is simply a speculative inquiry calling for the opinion of the witness on a matter which is or could be relevant only if knowledge of the questionnaire is traced to him. I assume from your Honor's previous rulings that you will receive the question, but I would like to make our position clear, that if it is received we take the position that it could only be received in that frame of reference.

The Court: Well, I understood that the question was directed to an inquiry as to whether or not the statement as it appears was an accurate statement at the time it was made.

Mr. Nizer: That's right.

The Court: The question of materiality is something else again. That is what you ran into in your discussion at the end. Isn't your inquiry at this point as to whether it was an accurate statement at the time it was made?

Mr. Nizer: That's right, your Honor.

Mr. VanVoorhis: Whether it was accurate or not, we submit, is irrelevant to the issues in this lawsuit unless it came to the knowledge of this witness so as to perhaps enable the defendant to be in a position (268) to urge that it was an admission against interest.

The Court: I thought we had discussed that this morning and my recollection is at one point I suggested it was elemental that one's knowledge is usually determined from all the surrounding facts and circumstances of the given situation.

As I have charged jurors so frequently, medical science has not yet developed a machine by which you can go back as to a given time and probe into a man's mind to determine what he knew as of that time or, for example, on the issue of intent, what his intent was as of that time.

It is usually determined by all the surrounding facts and circumstances.

I take it that is an accurate statement of the law, unless you want to take exception with it.

Mr. VanVoorhis: I don't quarrel with that statement.

The Court: I take it he is probing into all the surrounding facts and circumstances.

Mr. VanVoorhis: I want to make it clear—

The Court: In other words, I am receiving the evidence now and, as I said this morning, I am certainly making no factual determination simply (269) because the evidence is being received. It has to be evaluated together with all the other evidence in the case.

Mr. VanVoorhis: I just wanted to make it clear that we would object to its being received in any other frame of reference.

The Court: All right.

By Mr. Nizer:

Q. Now, Mr. Allen, did you before writing in the words "it was accurate"—incidentally, is that your handwriting? A. I don't think so.

Q. Are those your initials next to it? A. They are, but I don't think it is my handwriting, but I can't be definite.

The Court: There are a number of copies about. Does anybody have the original (handing to witness)?

Q. Looking at his Honor's copy, are the initials yours? A. The initials on this are mine, but the handwriting is not.

Q. You put your initials next to the handwriting that was on over your answer? A. I don't know whether the handwriting was on first (270) or last.

Q. You don't know whether it was on first or last? A. I don't know. I don't recall.

Q. When you say you don't know whether it was on first or last, I don't understand. A. I put my initials there. I don't know whether the other language was there at the time I put my initials there.

Q. Was there any reason to put your initials next to that line unless there was a change made? A. I don't know.

Q. Do you now recall, at least, that this matter was gone over with you either with your attorney or by your reading it yourself before that change? A. I don't recall.

Q. Did you know what the change was before you initialed it? A. No. If it was a change to be made on the next page, it nullifies the whole thing, so I don't think that—I don't know what that is.

Mr. Nizer: I move to strike out about the next page.

The Court: Yes, the motion is granted.

Q. There was annexed to the end of your deposition (271) a sheet—several sheets—called "Explanation of change." Do you see that? A. Yes.

Q. And the explanation for this change on page 233 is, "To answer the question as asked," in other words, to make it accurate to the question asked, is that right? A. To answer the question as asked?

Q. Yes. That was the reason for the change given by— A. I don't know.

Q. You don't know that? A. No, I don't remember that.

* * *

(272) By Mr. Nizer:

Q. What was your answer before the written-in statement? Do you have any recollection? A. To the question of whether we had a material relationship with Occidental?

Q. No, your answer which reads— A. To what question?

The Court: The witness asked the correct question. He asked you was it to the question, "Did you have any material relationship with Occidental?"

(273) Q. And your answer— A. Was yes, we did.

Mr. VanVoorhis: The question, Mr. Allen, is is that what you said at the time?

The Witness: I don't recall.

Q. Allen & Company, the partnership, never offered to Occidental to pay 25 per cent of the settlement which you referred to between Occidental and Galic, did it? A. Yes, we did.

Q. Didn't you testify yesterday that you didn't even see the settlement papers between Occidental and Galic? A. That would have nothing to do with it. We didn't know—

Q. I am not arguing, Mr. Allen— A. Did I testify what?

Q. Listen to my question. Didn't you testify yesterday when counsel asked you about that, whether you had made a correction, that you had not even seen the settlement papers between Occidental and Galic? Didn't you so testify, is my question. A. If it is there, I must. I don't recall at the minute.

Q. You have no recollection of your testimony (274) yesterday?

Mr. VanVoorhis: Let's find out what the time is as of which he is asked—

Mr. Nizer: Page 158 of yesterday's testimony:

"Q. I show you, Mr. Allen, an exhibit labeled 185 and ask you if you have ever seen that paper. A. No."

Question by Judge VanVoorhis:

"Q. You have not seen that? A. No."

A. That is the settlement.

Q. And that paper was the release, which he showed to you at the time. That is P185. I hand it to you, if it will help you (handing).

Did you so testify yesterday, is my only question at the moment. A. Well, I knew the terms of this from Galic, but I don't—

Q. Did you testify to that yesterday, that you had never seen that? A. I don't think I have seen it.

Q. Did you so testify yesterday? A. If the testimony says so, yes. I don't recall—

Q. And the answer is yes? (275) A. Yes.

Q. You have also testified that you had contacted your attorneys in October, 1966, because Galic, and I quote, "has signed away his rights." Do you recall that testimony yesterday? A. Yes. I don't know whether those were the exact words, but that is the summary of it.

Q. All right, I will accept that for a moment and I won't waste time. Did that refer to the prior settlement of Galic and Occidental, the signing away of his rights? Was that what you were referring to? A. Yes.

Q. When did you see the settlement papers for the first time which, as you characterized it, signed away his rights? A. I don't recall that. I didn't say sign away his rights, I said he effected a settlement, I believe. Is it "signed away his rights"?

Q. That is what it says at page 164. All right? A. Okay.

Q. When did you see the settlement papers for the first time? A. I don't recall that.

Q. Who showed them to you? (276) A. They were supposedly mailed by Mr. Galic, but I don't ever recall receiving them.

Q. Do you know when Mr. Galic mailed it to you, if you say supposedly? Do you have any idea? A. Well,

if you have the letter there, it might show it, but I don't know.

Q. You do know of a letter that you had that was shown to you— A. It mentions it, but I don't recall ever receiving them.

Q. I show you P188 and see if this helps to refresh your recollection. P188 is a letter from Galic to you, addressed, "Dear Charlie," and it is dated August 29, 1966, and this is three days after the settlement dated August 26, 1966, on P185. I just identified the time element for you.

I show you P188 and refer to the second paragraph and perhaps I can read it here: "I settled with Dr. Hammer and I sent you photostatic copy of my settlement." A. That's correct.

(277) Q. And so, does that refresh your recollection that Galic sent you a photostatic copy of a settlement three days before? A. I know in the letter he sent it, but I don't recall receiving it.

Q. How do you know about it? Your brother told you, is that it? A. Told me about what, the settlement?

* * *

(278) Q. You know of no photostat copy that was enclosed with the letter of the 29th with "Dear Charlie."

Did you keep whatever documents Galic gave to you when they were received by your office? A. Sometimes when they came in, I would give them to our attorney or I'd give them to Herbert or whoever they belonged to.

Q. Have you asked for that photostatic copy from your attorneys, your officer, or your files? A. You'd have to ask my attorney that.

* * *

(279) Q. Have you any copy of any kind of the Galic settlement papers that you ever saw or is in your office, to your knowledge? A. My attorney has; I haven't.

Mr. Nizer: I have called upon the attorney to produce it. Is the answer the same, counsel?

Mr. Greenspoon: Mr. Nizer, as you know, I did get copies of the releases but I didn't get them from the Allens; I got them someplace else.

Mr. Nizer: Have you got that copy, please?

(280) Mr. Greenspoon: Yes. It's marked as an exhibit. (Document handed to counsel.)

Q. You have testified that in August 1965 you told Mr. Galic to continue performing because the July 16, 1965 letter was meaningless. Do you recall your testimony to that effect? A. Yes.

Q. And that Dr. Hammer, despite the cable he had sent to Mr. Galic, had agreed to continue the contract with Mr. Galic, you so testified to that in your oral conversation, right? A. Yes. Yes.

Q. And this, you say, took place in August 1965 in accordance with your testimony of the alleged conversation? A. Yes.

Q. Now, yet you later testified that in October, about two months later, you received Exhibit D141 from Galic which we have called the blocking letter, "I blocked the way"—do you recall that letter? A. Yes.

Q. So do you say that despite your earlier assurance in August 1965 that Galic ought to continue, or (281) that Dr. Hammer would continue, he nevertheless sent you the blocking letter, P141? A. What's the question?

Q. Did he or did he not? A. What's the question?

Q. My question is, do you say that despite your assurance to him that he was to continue to help Dr. Hammer because Dr. Hammer was going to continue, according to the alleged conversation that you gave us, that two months later he nevertheless writes you, "I blocked the way"? A. His writing doesn't mean anything. He has a very bad command of the English language.

* * *

(282) Q. Did you take that to be an honest statement by Mr. Galic of what he was doing when you received this? A. Are you asking me?

Q. Yes. A. Did I take it to be an honest? What do you mean by an honest statement?

Q. Did you consider this— A. I considered that—

Mr. VanVoorhis: I object to that as calling for the witness' opinion.

The Court: It probably is, but I will allow it.

Mr. Nizer: Of course I am.

A. I considered that after my conversation with him, he continued doing everything.

Q. Even though he wrote you two months later that he was instructed by the lawyers to do nothing and wait to see if Occidental gets the concessions and follows it up with the next sentence, "I blocked the way"? A. May I see the whole letter?

Q. Yes.

When you are ready, Mr. Allen, reading it, I would like to put a question.

(283) (Pause.)

A. Go ahead.

Q. Well, if you are ready, first my question is, do the words, "I blocked the way," did they mean to you when you read it, that Galic was blocking the concessions for Occidental in Libya?

Mr. VanVoorhis: I object to that as calling for a conclusion. The letter speaks for itself.

The Court: Well, he may state his own understanding of what was meant by the term.

A. By the "blocking the way"?

Q. Does that mean he was blocking the concessions? A. That didn't mean he was blocking anything. If you read the whole letter, read—the man I got in touch with,

Mr. Ogbi, the Minister of Social Affairs now, but I have much more powerful relations and I can interfer favorably or unfavorably. Please let me have yours or Charlie's opinion on this. We had told him to go right ahead.

Q. You told him to go right ahead in the alleged oral conversation in August? A. That's right.

Q. And this is two months later, at least? A. He did not say he had done anything. He asked our (284) opinion and we gave it to him.

Q. So that, according to you, he didn't accept your alleged oral instruction in August to go right ahead, Dr. Hammer says it's all right, did he? A. In August when?

Q. 1966, two months before this—1965.

Mr. VanVoorhis: I object to that.

Q. 1965, two months before this letter.

Mr. VanVoorhis: I object to that as not proper cross examination.

The Court: Overruled.

A. Would you say that again? What's the question?

Mr. VanVoorhis: Argumentative.

Mr. Nizer: May I have the question read to him?

The Court: Yes.

Mr. Nizer: "According to you," beginning that question.

(Record read.)

A. Yes, he did accept my oral instructions and went right ahead.

Q. Now look at the next paragraph, "I will by no means associate with Dr. Hammer and Occidental Petroleum." Do you see that sentence? (285) A. That's right.

Q. And you still say that he was accepting your instruction to go ahead? A. Yes, because—

Mr. VanVoorhis: I object to it as argumentative.

The Court: Overruled.

A. Yes, because the sentence after it says, "I can interfere favorably or unfavorably. Let me have yours and Charlie's opinion on this."

Q. That's not— A. This is after that. That's the sentence after that.

Q. So that he wanted, according to you, at least, in the—it's the—pardon me, listen to the question.

As of October 13, 1965, he was not going ahead until he got further instructions or advice from you; is that what you are now telling us? A. I didn't say that at all. I said he had continued going ahead and he had done nothing when he had written this letter, and it says so in the letter.

Q. He had done nothing, which means— A. Nothing to block anyway. He had continued working.

Q. He had done nothing to also pursue his duty (286) under the contract as you had told him to do, had he? A. The only one that might answer that might be Mr. Hammer. I know he pursued his duties from him telling me.

Q. He had actually, according to this very letter, if you look in the first page next to the last paragraph, had contacted lawyers and they got in touch with him, and they suggested that he do nothing and wait until Occidental Petroleum gets its concessions. Does that mean to you he was continuing his duty? A. Doesn't mean anything. The paragraph at the end is what means everything.

Q. All right. Now, you claim that after receiving this letter of October 13, 1965, P141, you instructed him again on the telephone, as you have told us, to continue right on? A. That's right, continue right on.

Q. And then you testified that after this second assurance to him that Dr. Hammer was going to continue and he should continue, Galic nevertheless sent you a cable of March 15, 1966, which is now Exhibit 163? A. May I see it?

Mr. Nizer: Would you please hand it to him?
(Document handed to witness.)

(287) Q. In which, if you have it in front of you, Mr. Galic says, "Regret oblige sue you also." A. He didn't say "also," did he?

Q. Yes. A. "Sue you also for damages."

Q. "For damages, as Occidental Petroleum which you contacted for me has reneged on its contract. Letter follows. Galic."

Do you see that? A. This was after.

Q. Yes, that's March 15, 1966. A. Yes.

Q. So you see how many months after October 13th that is, don't you? A. That's correct.

* * *

(288) Q. I was saying to you, I will repeat it, Mr. Allen, you said that after this second assurance that you gave to Galic, that Occidental was going right ahead under the contract and that he was obeying your—or, at least, listening to your suggestion to also continue his services, despite that second assurance, months later you got this cable, March 15, 1966, in which he says we've got to sue not only Occidental but you? A. I promptly got him on the phone and he dropped any idea of suing Occidental or myself.

Q. I am going to ask you about that, but first my question is, you received that cable around the date of March 15, 1966? A. Yes, I did.

Q. Now, isn't it a fact that on the same day that you received Mr. Galic's cable of March 15, 1966 that Galic, to your knowledge, also sent a written claim letter to Occidental, which is "164? A. I don't know whether it was the same day.

Q. Well, look at the date. (288-a) A. It was sometime in early March.

Q. Will you show it to him, please, March 15, 1966?

Mr. Greenspoon: Is that the letter from Royall, Koegel & Rogers?

Mr. Nizer: That's right.

(Document handed to witness.)

(289) Q. Does not the fact that Mr. Galic sent you the cable on March 15, 1966, saying he was going to sue you as well as Occidental and that Mr. Galic sent the claim letter to Occidental on the same date refresh your recollection first that you had never given prior assurances to Mr. Galic that Occidental would continue its contract despite the July 16, 1965 letter and cable from Occidental to Galic?

Mr. Greenspoon: It is objected to, your Honor. The witness has testified categorically. He doesn't need his recollection refreshed.

The Court: The Court disregards your statement and overrules the objection. I think that is a proper question.

A. May we have the question again?

Mr. Nizer: Would you read it to him, please?

(Question read.)

A. You will have to give me—

Q. Does that refresh your recollection that you never gave such assurances to Mr. Galic? A. It refreshes my recollection that we got hold of Mr. Galic immediately and told him his contract as far as we knew was still in force and we were still continuing; he should continue and help Mr. Hammer in every way possible, and there was never any suit brought as far as I know.

Mr. Nizer: I move to strike that.

(290) A. (Continuing) So Mr. Galic took the assurances from me and, I believe, withdrew everything.

Mr. Nizer: I move to strike that all out as not responsive.

The Court: Strike it out.

Q. My question is—

Mr. VanVoorhis: Just a moment. Your Honor, it may have been somewhat argumentative, but so was the question.

The Court: The question was whether or not a series of events didn't refresh his recollection as to what the true facts were, and I think that is a perfectly proper question.

Q. Isn't it a fact, Mr. Allen, now that I call your attention specifically to the cable you received from Mr. Galic, the blocking letter which you received after you told him to go ahead, and, finally, the letter of claim to Occidental, that actually you never gave him all these oral assurances that Dr. Hammer had withdrawn his July 16, 1965 letter to Galic saying he had terminated all relationship with him—doesn't that indicate to you that your recollection with respect to all these alleged conversations was faulty?

Mr. VanVoorhis: Objected to as argumentative.

The Court: That is sustained as to form.

Mr. VanVoorhis: I move to strike out the answer (291) if it is—

Mr. Greenspoon: He didn't say anything.

Q. In the cable, Exhibit 163 for identification, the last words of the cable are: "Letter follows". Yesterday you were asked to produce that letter, and what did you tell us about that? What is your best recollection as to whether you got a letter or where it is or whether you made a search? A. I know we turned my files over to your attorney. I don't know. I have no letter, unless there is a letter that my attorney has.

Mr. Nizer: Does counsel say that he has looked through the files and there is no such letter?

Mr. Greenspoon: If you could describe the letter, I will tell you whether I have it.

Mr. Nizer: The letter which is referred to in the cable as "Letter follows" as the contents to that cable. That is the description of it.

Mr. Greenspoon: If the letter which follows is the letter from Kabazi to Galic or a copy of it, I have it. If it is something else—I don't know what it is. I can't answer the question.

Mr. Nizer: We are talking of March 15, 1966, when Galic says, "Letter follows", meaning he has sent a letter. Have you got such a copy of a letter or the original?

(292) The Witness: I have not.

Mr. Nizer: Now I ask counsel: have you any?

Mr. Greenspoon: I can't answer the question. I have no letter dated March 15, 1966 from Galic to Allen.

Mr. VanVoorhis: Mr. Allen testified yesterday that no letter did follow. I think that—

The Court: I am aware of that.

Mr. VanVoorhis: I think that is the state of the record.

Q. Did you testify to that? A. Yes.

Q. You now testify that no letter came, or you gave it to your counsel and you don't recall? A. I said I had no letter.

Q. Do you now testify, as Judge VanVoorhis said, that you didn't receive a letter, that you have a definite recollection that you didn't get one? A. Yes.

Q. You do so now say? A. Yes.

Mr. VanVoorhis: He said so yesterday.

Q. Well, then, I show you Defendant's Exhibit D-51 for identification—

Mr. VanVoorhis: Excuse me for interrupting you. (293) Just a moment. Before we pass on to this, it seems to me that this letter, P-164, which has been referred to by Mr. Nizer in his questioning, ought to be received in evidence.

Mr. Nizer: Oh, no, no.

Mr. VanVoorhis: It is not offered? If it is not offered by defense counsel, plaintiff's counsel will offer it.

Mr. Nizer: I object to that, your Honor. I used it to refresh his recollection, to contradict his alleged oral statements. It was an impeachment attempt to refresh his recollection. But I object to the document. It is self-serving.

The Court: What does it prove? I was just about to say, like every claim letter that I have ever come across, either when I practiced law or since I have been in the court—everybody makes self-serving declarations in a demand for payment without suit. Why do we spend time on it? If you will be happy with the letter in the record, I will put it in. It doesn't belong in the record, and I pay absolutely no attention to a claim—

Mr. VanVoorhis: It is the—part of the—

The Court: Don't tell me it is part of the *res gestae*. We received the outer limits of that.

Mr. VanVoorhis: That is not my favorite expression.

The Court: It is in the briefs a great deal.

(294) Mr. VanVoorhis: If it is in the briefs—

The Court: I will take it. It is as meaningless as any claim letter ever sent by one party to another, demanding payment under threat of a suit.

(Plaintiff's Exhibit P-164 was received in evidence.)

Charles Allen, Jr., for Plaintiff, Cross

Q. Did Mr. Galic write you and ask you to support him in his lawsuit against Occidental? A. No.

Q. I show you Exhibit D-51 for identification, a letter written by Mr. Galic, and the date of it, notice, is March 15, 1966, and I call your attention—you can read anything else you wish, to refresh your recollection—to the third paragraph, in which on March 15, 1966 Mr. Galic says: "I just wrote to Mr. Allen, who introduced me to Occidental, to ask him to support me in my lawsuit, since morally he is responsible." I ask you if that refreshes your recollection. A. No.

Q. It doesn't? A. No.

Q. Well, then, that's an answer.

You testified that you had a telephone conversation with Mr. Galic on or about March 15, 1966. Do you recall that testimony? (295) A. I had telephone conversation with him right after receiving the telegram.

Q. That is what I say you testified to. A. Yes.

Q. Now, in that telephone conversation with Mr. Galic, did you tell him that he had a weak case against Occidental? A. No.

Q. I show you again a letter by Mr. Galic dated March 15, 1966—I withdraw "I show you"; it may not be necessary, unless it refreshes your recollection—in which he writes after the sentence: "I just wrote to Mr. Allen, who introduced me to Occidental, to ask him to support me in my lawsuit, since morally he is responsible."

Now, continuing: "It is also to a great extent my own fault", writes Galic. "I relied on your statement". This is DeRovin's statement in this case. A. Who is this to? To me?

Q. To DeRovin, but this is Galic writing: "* * * that the concessions could be obtained by negotiation, and then it was by tough bidding. This is what Mr. Allen reproached me yesterday. You could have avoided that," he says to DeRovin. "That will be a weak point in my lawsuit."

Did you, when you had this conversation with Mr. (296) Galic, reproach Mr. Galic because he had told you that it was going to be negotiation that was tough bidding under seal, and consequently he had a weak case now? A. No.

Q. Did you tell him that? A. No.

* * *

(298) Q. Do you say that the conversation which I have just attempted to refresh your recollection with that Galic described you had with him never took place? Is that what you are telling us? A. That's correct.

* * *

(299) Q. You learned, did you not, Mr. Allen, that Occidental had been awarded the two concessions by the Lybian Government under sealed bids on February 20, 1966? A. I learned there had been an award in February or March. I don't know anything about sealed bid.

Q. All right. You learned it in February? A. February or March. I don't recall the exact date.

Q. Was it late February or was it early March or (300) what? A. I don't recall the exact date.

* * *

(302) Q. Now, as you understand it, of course it was Galic who was to try to obtain concessions through his intervention and service these very concessions or others for Occidental. That was his task, was it not? Was it not? A. Will you ask me the question again?

Q. Didn't you understand that Galic purpose of service, his obligation was to the various people he brought into—or himself—to help get concessions for Occidental? A. That's correct.

Q. And as I understand your answer—and if I don't understand it correctly, tell me—you learned that Occidental had succeeded in getting two concessions in Febru-

ary 1966. A. Late February or early March. I don't know the exact date.

Q. Now, do you tell us by your prior conversation that you claim you had with Galic that on March 15th, after receiving that cable, which is Exhibit 163, you called Galic and told him to go ahead and continue his efforts? Is that right? Is that what you told us? (303) A. I told him to go ahead and continue working with Dr. Hammer.

Q. Even though you knew by that time that the task had been consummated, namely, concessions had been awarded; those were awarded to all the companies who made applications, and Occidental had made two? A. There was a lot of work still to be done.

Q. What services, to your knowledge, if any did Galic render in obtaining the concessions for Occidental? Do you know any? A. Yes. He introduced them to proper people in Lybia who could be influential in helping him get the concessions, and he also made suggestions to him how to proceed and what to do.

Q. Well, haven't you answered on your deposition that you don't know of any service that Galic rendered? A. At what deposition?

Q. In your deposition. A. I have found out since what Mr. Galic did.

(304) Q. When did you find out what your answer, that you don't know of any service that he rendered—when did you find out that that was incorrect?

Mr. VanVoorhis: Well, I object to that question. Improper cross examination. The witness didn't say that that was incorrect, he said he found out since. The question is improper cross examination.

The Court: I think you better put the question and answer upon which you rely in the deposition.

Q. I read from the bottom of page 449 of your deposition:

"Q. Do you know, and if you do, tell us about it, what Mr. Galic did in effort to obtain the Libyan concessions? Do you know what efforts he made? A. I don't know."

Did you so testify? A. May I see it?

Mr. Nizer: Will counsel show it to him, please?
Mr. Greenspoon: Yes (handing to witness).

A. That's correct.

Q. Do you say that you learned that you had other information after that? That's correct.

Q. When did you learn other information? (305) A. In the last few years.

Q. What year, please? A. I don't know the exact year.

Q. Do you know that this testimony was given by you on the 5th of December, 1967? A. That's correct, if you say so.

Q. Yes, I do say so. A. Since then I learned of what he had done.

Q. Did you learn what you claimed you learned after this answer that you gave before the end of 1970— A. I don't recall—

Q. —or after 1970? A. I don't recall what year, but in the last few years.

Q. The last few years would be, according to your best recollection, what? Can you give us some estimate, at least? A. No, I can't give you an estimate.

Q. On December 16, 1970, and that is virtually the first of the year of 1971, very close to it, did you at that time know that that answer that you made on page 449 and 450 was incorrect? A. I can't pinpoint the date.

Mr. VanVoorhis: Your Honor, the questions (306) ought to make clear whether it refers to what he knew of his own knowledge and what he

learned as a result of inquiry and investigation. We have heard hearsay used here and maybe that has some application.

The Court: Well, I think if you are reminded to do so, you may pick it up on re-direct.

Q. In March, 1966, when you told Mr. Galic, as you claim, to go ahead, you had no knowledge of what services he had rendered or was rendering, did you? A. I may have, but I don't recall. I knew that he had introduced Mr. Hammer, I knew about the September meeting, I know that they were working together.

Q. I am talking about— A. I don't know what services. I was never informed by Mr. Hammer at that time.

Q. So in March, 1966, it is correct to say, isn't it, when you claimed this oral conversation with Mr. Galic, that at that time you didn't know what he had done to render services for Dr. Hammer, not meeting him— A. That is not correct. He had been rendering services right along.

Q. Did you know what it was? A. I don't know what it was.

Q. That is my question: Did you know what service (307) he was rendering, or was your answer correct at the time you made it? A. I didn't know what services he was rendering.

Q. In May, 1966, did you believe that you had a 25 per cent interest in Occidental Libyan concessions? A. Yes.

Mr. Nizer: I offer in evidence the prospectus, D11.

Mr. VanVoorhis: That is objected to your Honor, on substantially the same grounds which I stated previously in relation to the questionnaire. Furthermore, this is issued by Occidental. It is in the nature of a self-serving declaration and, in addition, all the grounds I mentioned earlier in connection with the questionnaire.

Charles Allen, Jr., for Plaintiff, Cross

Mr. Nizer: The pre-trial order, your Honor, paragraph 27, reads, "On June 17, 1966, the defendant made a public offering of convertible subordinated debentures in the amount of $61,186,300 through various underwriters, including Lehman Bros., Allen & Company, Incorporated, and Reynolds & Company. The lead underwriter was Lehman Bros. Each underwriter named above agreed to purchase 10 per cent of the unsubscribed debentures of said offering. The debentures which Allen & Company, Incorporated, agreed to purchase were sold by it immediately upon the registration (308) statement becoming effective."

Number 28, "The prospectus issued by defendant in connection with said offering of debentures was dated June 17, 1966, and was supplemented under the date of July 6, 1966. Mention of Libyan oil concessions appears on pages 23 and 24 of said prospectus."

So I don't quite follow my friend's objection, but, aside from that, we have a pre-trial order which stipulates these facts and I am putting the document in evidence.

Mr. VanVoorhis: It doesn't stipulate the admissibility or relevance of it or materiality.

The Court: Why shouldn't this be received on the same basis that the questionnaire was received?

Mr. VanVoorhis: For the same reasons which I previously stated, if your Honor please.

The Court: I will receive it. Allen & Company appears on the face of this document, D11, as one of the underwriters. There is a specific reference, as I understood the pre-trial order, to the concessions which are the subject matter of this litigation.

Mr. VanVoorhis: It is a somewhat ambiguous reference. We maintain that it is not binding on the plaintiff, and all the other grounds of objec-

tion which were previously (309) stated—may it be received subject to a motion to strike if it is not connected up, if it is to be received at all?

The Court: I will take it for whatever value it has.

(Defendant's Exhibit D11 for identification received in evidence.)

By Mr. Nizer:

Q. Was Mr. Deer the attorney for Allen & Company, Incorporated, at the time this prospectus was issued?

Mr. VanVoorhis: That question is objected to as ambiguous. It implies but does not state whether the—it implies but does not state that the attorney for the company means in connection with the bond issue, I think the question ought to be clarified.

Mr. Nizer: I think it is clear enough.

The Court: Well, suppose you clarify it.

Mr. Nizer: All right. If I may see a copy while his Honor is reading that—do you have another copy?

Mr. VanVoorhis: Of the prospectus?

Mr. Nizer: Yes.

Mr. VanVoorhis: Surely (handing).

Q. Do you know—

Mr. VanVoorhis: Pardon me. This document itself recites that Messrs. Simpson, Thacher & Bartlett are (310) attorneys for the underwriters. I think that the implication in the question, that Mr. Deer was acting in the matter, is—

The Court: I will allow the inquiry as to whether or not there were attorneys representing the separate underwriters. There appear to be three underwriters, Lehman Bros., Allen & Company, Reynolds & Company.

Mr. Nizer: That is the purpose of my question.

Mr. VanVoorhis: What is the question?

Q. My question is, was Mr. Deer, an attorney, the same attorney that you have referred to previously, the attorney for Allen & Company, Incorporated, with respect to this debenture issue? A. I don't speak for Allen & Company, Incorporated.

Q. I am not asking whether you speak for them; I am asking whether you have knowledge that he was. A. His firm—

Q. His firm was? A. His firm was.

Q. Do you know who is his firm? Wasn't it Mr. Deer, in his firm? A. I don't know. They have quite a few and I don't know exactly—I didn't handle it, so I don't know.

Q. Do you know whether Mr. Deer was one of the (311) attorneys in that firm? A. I don't know.

Q. You don't know? A. I know he is an attorney in the firm, yes.

Q. I didn't mean to challenge you on that. Did Mr. Deer represent Allen & Company, the partnership, at that time, as distinguished from the corporation?

Mr. VanVoorhis: Is this speaking of general representation?

Mr. Nizer: Yes, of the partnership.

Mr. VanVoorhis: This company employs many different lawyers in many different contexts and it ought to be clear whether this question asks whether Deer represented Allen & Company in connection with this bond issue or whether it refers to some other capacity as attorney which has no relation to that.

I object to the question.

Q. Don't you know that Mr. Deer's specialization is issues to be supported by Allen & Company, Incorporated,

but which Allen & Company, the partnership, at times referred to Allen & Company, Incorporated if it wasn't a municipal?

Mr. VanVoorhis: That is objected to as argumentative.

(312) The Court: He asked if he knew.

A. I can't follow it anyway.

Q. Withdrawn. I will put it more simply. Wasn't Mr. Deer's specialty SEC regulations and law and checking? Don't you know that, or do you? A. Well, just let me think.

Q. All right, sure. Excuse me. A. He came from the SEC. I don't know what his specialty was there.

Q. Do you know, therefore, that his special service, so to speak, not exclusively, perhaps, but his special service for Allen & Company, Incorporated, was with respect to issues of Allen & Company, Incorporated? A. I don't see how I can answer for Allen & Company, Incorporated.

Q. I am asking you whether you know it, not whether you can answer for it. Don't you know that he was one of the attorneys who handled SEC work on issues of Allen & Company, Incorporated? A. I was not acquainted with the affairs of Allen & Company, Incorporated.

Q. Was Mr. Deer ever attorney for Allen & Company, the partnership? (313) A. Yes, he was.

Q. In respect to what matters, sir? A. He was part of the Holtzmann firm.

Q. In what matters did Mr. Deer represent the partnership? A. I couldn't tell you. This was not under my authority.

Mr. Nizer: May I know whether your Honor intends to sit much later?

The Court: I will sit until 5 o'clock, because I had not planned to take a recess this afternoon

and you asked for one. So we will sit until 5 o'clock to make up for the time I gave you.

Mr. VanVoorhis: I think it should be made clear whether the witness understood the rather ambiguous questions with reference to whether or not Mr. Deer did represent Allen & Company, Incorporated in connection with this bond issue.

The Witness: Not Allen & Company, it was Allen & Company, Incorporated.

Mr. VanVoorhis: What is it?

Q. Did a debenture issue in excess of $61,000,000 represent a substantial underwriting for Allen & Company, Incorporated, in 1966?

(314) Mr. VanVoorhis: Objection—all right, no objection. Substantial underwriting, I thought he was going to ask another question. I withdraw my objection.

Q. Will you answer that, please? A. For Allen & Company, Incorporated?

Q. Yes. Was that a sizable or substantial underwriting for Allen & Company, Incorporated? A. From what I know of Allen & Company, Incorporated, which is very little, it was not.

Q. It was what? A. It was not very big.

Mr. VanVoorhis: The prospectus shows they had only 10 per cent of it.

Q. At page 209, when you were asked that question, didn't you say it is sizable for Allen & Company, Incorporated? A. It is a sizable issue, but it is not anything great.

Q. What was the net worth of Allen & Company, Incorporated in July, 1966? A. I don't know.

Q. Was it in excess of $61,000,000 or 10 per cet of it? A. I don't know.

Q. Did the partnership financially support in any way, directly or indirectly, the corporation in connection with the (315) defendant's debenture issue? A. No.

Mr. VanVoorhis: Having referred to the EBT, your Honor, I think counsel should read the whole of the questions and answers on that particular subject.

The Court: What page is that?

Mr. VanVoorhis: Page 209, lines 15, 16, 17, 19, 20.

(Pause).

Mr. Nizer: Your Honor, if I am not interrupting you, my question was addressed to the corporation, and he says it is sizable. What Judge VanVoorhis is asking is another question, as to whether it is sizable for the partnership, and that is another question. The corporation had limited assets at that time, compared to the partnership.

Q. Isn't that correct, Mr. Allen? May I ask you that, which had larger assets, the partnership or the corporation? A. Partnership.

Q. How much larger, would you say, in an approximate way, how many times the assets did the partnership have in 1966 as against the corporation? A. I don't know the balance sheet of the corporation in 1966.

* * *

(316) Q. Haven't you testified at page 431, Mr. Allen, as (317) follows, to the questions I put:

"Q. Were you ever called upon to finance anything by way of Occidental's efforts in this? A. We were called upon to finance in June, 1966."

Now, I stop there to ask you, to finance in June, 1966, meant the debenture bond issue of June, 1966, did it not? A. I imagine it did. It probably did. I don't recall at the time.

Q. Then after that answer the question continues:

"What," and you answered, "$62,000,000 issue," and you were referring to this debenture bond issue of the prospectus that we just went over, right? A. Right.

Q. Is that right? A. Right. May I see the whole thing?

Q. I am going to read more to you. A. I would like to know what is before it.

Q. Your counsel will have an opportunity on redirect examination to ask you any other question.

Mr. Greenspoon: Under Rule 32, your Honor, I think he has to read everything material to this question.

The Court: That is what he is doing.

Mr. Greenspoon: No, he isn't. He didn't read the (318) first question that leads into this, your Honor, and that is the point.

Mr. Nizer: If your Honor will look at 431, I am starting with the question at the top of the page, the first question.

Mr. Greenspoon: He left off the first answer to the last question on the last page.

Mr. Nizer: That is 431, and I had one other question to ask. I started your Honor, with the top of the page, the first question, and now I am up to the third question and that is all I will read.

The Court: What page?

Mr. Nizer: 431.

Mr. VanVoorhis: If your Honor will refer to the very top of the page, you will see just what we mean.

Mr. Nizer: You can read on redirect anything.

The third question is:

"Q. I am talking about the Libyan matter. A. Well, that's in connection with it."

That is the $62,000,000 issue that you just replied.

First, did you make those answers to those three questions I have just put? A. I would have to read it to see. (319) Q. Do you have to read it to see whether you made those answers that I have read to you?

(Document handed to the witness by Mr. Greenspoon.)

Q. Just those three questions, Mr. Allen. If you want to read anything else, your counsel will give you full opportunity. A. What is the question?

Q. Did you make those answers to the first three questions at the top of the page that I have just read to you? I hope I need not repeat them. Did you make those answers to those questions? A. Well, it's hard to—

Q. Pardon? A. Which questions?

Q. "Q. Were you ever called upon to finance anything by way of Occidental's efforts in this? A. We were called upon to finance in June, 1966.

"Q. What? A. $62,000,000 issue.

"Q. I am talking about the Libyan matter. A. Well, that is in connection with it."

Did you make those answers to those questions? A. Well, that is so confused there. There is no (320) answer to it, really.

Q. What isn't answered in those three questions? A. I say I didn't say that. You asked me if we did anything in the financing and we continued right through with the financing and we were to continue through the last registration—

Mr. Nizer: I move to strike that out as not responsive.

The Court: Strike it out.

A. We were assured further we would guarantee Occidental's financing, assured Occidental—

Mr. Nizer: I move to strike that out.

Q. My simple question is, and I repeat it again for the record, those three questions:

"Q. Were you ever called upon to finance anything by way of Occidental's efforts in this? A. We were called upon to finance in June, 1966.

"Q. What? A. $62,000,000 issue."

Did you make those answers to those questions when you were asked those questions, and the next answer—A. Yes.

Q. You made those three answers? A. I believe so.

(321) Q. Were they correct when you made them? A. I don't recall—I don't—

Q. Do you want to change your answers? A. Well, I don't know the rest of it. I would have to read it through both ways.

Q. Did you ever change those answers when you signed the deposition? A. Well, there is an N next to it, so there may be some change.

Mr. Greenspoon: We will stipulate, your Honor, that they were not changed, to save time.

Mr. Nizer: You will stipulate what?

Mr. VanVoorhis: That they were not changed.

A. Did I answer the question.

Mr. VanVoorhis: Yes.

Q. Weren't you familiar in June, 1966, as a partner in Allen & Company, the partnership, that you were trying to finance the Libyan matter, as you have just described it, by virtue of the corporation's helping on the debenture issue, which would raise money for Occidental? Isn't that the meaning of these answers and didn't you intend to say that? A. I think you have to read the prospectus—I would have to read the prospectus to answer that.

(322) Q. Weren't you familiar with the prospectus, at least in a general way, if you were talking of a $62,000,000 issue? A. I never read the prospectus.

Q. How many issues before and after your incorporation of Allen & Company into a partnership in addition to Allen & Company—how many issues had you been associated with over the last 40 years? A. I guess several hundred—last four years?

Q. 40 years. A. Several hundred, I guess, maybe more.

Q. Involving tens of millions of dollars? A. That is correct.

Q. Were you familiar that in each case there had to be a prospectus and it was given to every purchaser who bought the bonds? A. I was not familiar. My job was not to take that part of the business.

The Court: Are you saying that as an investment banker you were not familiar—

The Witness: I knew there was a prospectus. I thought he asked me about the contents of the prospectus. I knew there had to be one.

The Court: Wouldn't you know the purpose of (323) a prospectus as an investment banker of considerable experience?

The Witness: The purpose of the prospectus? When we originate the deal, yes, but then it is passed on to our attorneys and to the people who set it up, but we don't read the prospectus. That is up to our attorneys to read and the people who work on it. We originate the business. I don't think there is any lead underwriter in the street where the top partners read the prospectus.

By Mr. Nizer:

Q. As a result of your experience as an investment banker over all these years, did you know that one of the things required of an underwriter is to assure the public, as well as the SEC, that if there is any material

relationship between the underwriter and the issuer and the company that the public, as well as the SEC, must be advised so that they can take it into consideration in buying these tens of millions of dollars of bonds? Didn't you know that generally? A. Yes.

Q. Didn't you also know that in order to assure that such procedure— A. Will you start that from the beginning?

Q. Didn't you know that in order to assure such (324) procedure that a questionnaire, as it is called, an underwriter's questionnaire, is the technique by which the underwriter must assure the other underwriters, the lead underwriter, that there is no material relationship between him as one of the underwriters and the issuer? You knew that as a general proposition? A. I am not familiar with the legal part of it, with the questionnaires—

Q. I am not talking of how you draw it, I am talking to you about the fact of didn't you know that was one of the things that had to be done in the form of a questionnaire? A. I am not familiar with the questionnaires.

Q. Had you ever know such a thing as a questionnaire for an underwriter? A. Have I ever known? I have never seen one.

Q. You never saw one? A. No, not until this came along, after the case started.

Q. I think we once quoted this from your deposition: you testified at page 206 and 207 as follows:

"Q. You are also familiar, are you not, with the fact that the SEC in the statute relating to these matters generally requires that all material relationships which the underwriter has with the registrant, with the issuer, (325) shall be disclosed in the questionnaire, is that correct? A. Yes."

A. I just answered yes to that.

Q. So you knew that there was a questionnaire? A. I knew there was a questionnaire but I didn't know what a questionnaire consisted of.

Q. What was the purpose of a questionnaire, as you understood it? What was it for? A. The purpose of a questionnaire, I guess, would be to help in full disclosure.

Q. That's right. And part of the full disclosure was whether there was a material relationship between the underwriter and the issuer. Isn't that part of it, or do you exclude that? A. No, I don't exclude it.

Q. You include that? A. I can't talk on the legal terms.

Q. I am not asking you law, I am asking whether you know the fact that there was to be a disclosure of a relationship? A. The material fact that it should be in, yes.

The Court: Do you have another question to put now?

Mr. Nizer: I am ready to adjourn, your Honor, if your Honor doesn't mind.

(326) The Court: I want to exhaust this area of inquiry.

Mr. Nizer: All right, I will put one question on this one subject.

Q. Mr. Allen, if you were buying a bond under the $62,000,000 debenture issue and there was a description—assume this now—in the prospectus of the concessions which the issue had obtained in Libya, and a full description of the potentials of that so that there could either be large profits from it or losses, would you as a buyer of that bond feel that you ought to know that if there is a profit, somebody else owns 25 per cent of it and that the issuer hasn't got a hundred per cent?

Mr. VanVoorhis: I object to the form of the question. It is argumentative and irrelevant and improper cross-examination.

The Court: I will allow the question.

Q. Would you want to know that, sir? A. I wouldn't be buying the bonds, so I don't know.

Q. If you were buying such a bond—I would expect— A. I would expect that most of these concessions are owned by more than one company.

Q. And would you think that if it was owned by more than one company the man who buys it ought to know that?

(327) Mr. VanVoorhis: That is hypothetical, your Honor.

Mr. Nizer: Yes, it is.

The Court: Let's get on with this one question and we will take our adjournment.

Q. Would you think that if there were three people, three companies that owned these concessions in Libya that the bondholder was entitled to know that Occidental didn't own a hundred per cent but maybe only 10 per cent?

Mr. VanVoorhis: I think he ought to add whether or not they had struck oil at that time.

Mr. Nizer: I am assuming just as it is, he has concessions, they struck no oil, it might be a loss or it might be a huge gain.

Q. Do you think that the buyer of the bond should be advised? A. If it is material, it should be in.

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Charles Allen, Jr., for Plaintiff, Cross

(330) New York, New York.
September 12, 1973—10:00 A.M.

(Trial resumed.)

CHARLES ALLEN resumed.

Cross Examination (continued) by Mr. Nizer:

Q. Mr. Allen, yesterday I asked you a series of questions regarding your alleged meeting with Dr. Hammer in November 1965 concerning Galic's blocking letter dated October 13, 1965. Do you recall that subject matter discussed yesterday at the trial? A. I do, yes.

Q. Now, isn't it a fact, Mr. Allen, that you never mentioned this alleged meeting and conversation with Dr. Hammer throughout your entire deposition of more than 600 pages?

Mr. Greenspoon: It is objected to, your Honor. The witness may well not have ever been asked about it and I think that is the fact if your Honor will read the (331) deposition.

The Court: Overruled, he may ask him.

You may ask him on redirect.

A. The question is what?

Mr. Nizer: Would you be good enough to read it.

(Question read.)

A. I guess I would have to read the 600 pages. I don't recall.

Q. And isn't it a fact that although various changes were made in the deposition that you gave before signing in December 1970, you never made reference to that alleged meeting in any of the changes?

Mr. VanVoorhis: That is objected to as not proper cross-examination. The deposition was con-

ducted by Mr. Nizer, an adverse party, and the question presupposes that he was asked concerning this. I don't have the entire deposition in my mind and memory, at the moment, but my recollection is that a great deal of this material to which he has testified in court here on this trial was not asked about by Mr. Nizer. I think that the question presupposes that he was and that he answered in some different manner from here on the trial and he is now being (332) asked whether or not he made any changes or suggested any changes in it when he signed it. This is all I think a figment of the imagination of the cross-examiner. I don't think he was asked about that.

The Court: Overruled. And you may on redirect inquire whether or not it is the fact he was asked the questions to which reference was made.

Mr. Nizer: If counsel wasn't present—

Mr. VanVoorhis: I do think, your Honor—

The Court: Let's not argue it any further. I am overruling. Mr. Greenspoon made the objection, you repeat it. I said I am going to let him answer it and you may pick it up on redirect.

A. I don't recall whether I was ever asked the question.

Q. Did Allen & Company have any prior experience with oil concessions before the Libyan matter? A. Yes.

Q. And did that experience concessions both within and without the United States? A. Yes.

Q. Did your experience reveal that oil exploration can be very costly and involve millions of dollars? (333) A. Yes.

Q. I show you Plaintiff's Exhibit 71 for identification which is Exhibit A annexed to the complaint, your Honor, the letter of December 17, 1964, and ask you whether Herbert, your brother, discussed with you the ink change he inserted in this letter before he sent it to Dr. Hammer? A. Yes.

Charles Allen, Jr., for Plaintiff, Cross

Q. Now, even the cost of a seismographic—withdrawn. Do you know what a seismograph is? A. Yes, I know of a seismograph. I know the purpose of it.

Q. Yes. Now, even the cost of a seismograph alone in the course of exploration for oil can cost millions of dollars before you even get a result? A. That's correct.

Q. Now, did you agree with your brother Herbert with respect to the ink insertion which he wrote into this December 17 letter? A. Yes.

Q. Aside from the letter of December 17, 1964, does there exist any other signed writing between Occidental and Allen & Company regarding participation in the Libyan (334) oil concessions? A. Are there any other? I believe there are.

Q. Well, if you understand my question— A. Well, you have to—

Mr. VanVoorhis: Was this December 7?

Mr. Nizer: December 17, Exhibit A.

Mr. VanVoorhis: I thought you said November 17, Exhibit A.

My memory may have failed me.

Mr. Nizer: December 17. May I repeat the question, please, for the witness.

Q. Aside from the letter which is Exhibit A annexed to the complaint, the December 17 '64 letter, does there exist any other signed writing between Occidental and Allen & Company regarding participation in oil, Libyan concessions? A. This letter is addressed to Herbert Allen. There are some other letters exchanged by Herbert Allen. I don't know the dates.

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(336) Q. Does not the letter marked Exhibit 12 on the deposition, which is Exhibit A annexed to the complaint, dated December 17, 1964, contain all the understandings between the parties with regard to oil concessions in Libya? A. Yes.

Q. There came a time, Mr. Allen, when Galic sent a claim letter, which is Exhibit No. Plaintiff 164 to Occidental, dated March 15, 1966. Do you recall that, a claim letter of Galic to Occidental?

Mr. Greenspoon: Are you referring to the Royal, Koegel letter?

Mr. Nizer: Yes.

A. Can I see that?

Q. No, I have nothing to show you. A. What was the question?

Q. You were looking at a memorandum when I asked you the last few questions. What are you examining, sir? A. Examining nothing.

Q. What is that sheet before you? A. That has nothing to do with it.

Q. May I take a look at it, please? A. Sure. That's your letter you just gave me.

Q. That is the December 17th letter before you? A. That's right.

(337) Q. Your counsel gave you that.

Mr. Greenspoon: At your request.

Q. My last question, sir, is if you recall—I am just fixing your mind upon the matter which I want to ask you about—there came a time when Galic sent this legal claim letter to Occidental, March 15, 1966. Do you recall that? A. Do I recall what?

Q. Do you recall the incident about which we had examination here yesterday— A. Well, if you let me see it. I don't know what the claim letter you are talking about is.

Mr. Nizer: Do you have that exhibit?

Mr. Greenspoon: Yes (handing to witness).

Q. Is that right, sir? A. Is what right?

Q. Is my question right, that there came a time when Galic sent a claim to Occidental, claim letter, March 15, 1966, right? A. Right.

Q. You testified to an alleged conversation with Dr. Hammer in August, 1966, regarding Galic's claim and your alleged telephone call to Galic at that time. Do you remember that testimony yesterday? (338) A. Yes.

Q. And you also testified yesterday that in your alleged conversation with Galic on that occasion you offered to share your alleged interest in the Libyan venture with him. Do you recall that testimony? A. In August, 1965?

Q. Yes.

Mr. Greenspoon: 1966.

A. Are you talking about 1965 or 1966?

Q. 1966. A. Oh, you said 1965. Yes, I do recall that.

Q. Did you specify the amount you were willing to share? A. Anything up to 50 per cent of our 25 per cent.

Q. When you originally answered this question on the deposition, did you say no, that you didn't specify—

Mr. VanVoorhis: May we have the page?

Mr. Nizer: In a second. I am asking the question.

A. I said he could have any part of our participation.

Q. My question is, when you originally testified with respect to that same question, didn't you say that you did not offer him any share? A. I did not.

Q. All right, let me read the following question and answer—

Mr. VanVoorhis: May we have the page?

Mr. Nizer: Yes, page 313.

Q. "Q. Did you ever specify with Mr. Galic the amount which you have testified you said you offered him as part of your 25 per cent? A. No."

A. That's correct.

Q. You didn't specify it? A. I didn't specify the amount.

Mr. Greenspoon: I ask that Mr. Nizer read the balance of the answer.

Mr. Nizer: I am going to read the change he made. It is not the balance of his answer.

Mr. Greenspoon: All right, the change that was made.

Mr. VanVoorhis: And the balance.

Q. My question is, when you first were asked this question, whether you specified the amount which you said you offered to him at that alleged conversation, that you first answered, back in 1967, December 4th, "No." That was your original answer, wasn't it? A. To what, what question?

Q. I will read it again. (340) A. The question you just asked?

Q. Yes. Let me read the specific question to which you answered "No."

Q. "Q. Did you ever specify with Mr. Galic the amount which you have testified you said you offered him as part of your 25 per cent? A. No."

Did you make that answer— A. That stands.

Q. That stands? A. Yes.

Q. Did you ever try to correct that answer? A. No. Wait, excuse me, I don't know. I would have to examine it to see. I don't have the deposition in front of me. I can't tell.

Mr. VanVoorhis: Just a moment, please. These questions are confusing and ambiguous in that they do not make it clear to the witness whether he is being asked whether he specified the amount up to 50 per cent or whether he made any mention of the maximum. I think the question ought to be clarified.

The Witness: He is asking me whether I made any specific amount, and I said up to 50 per cent, but not (341) any specific amount.

Mr. Nizer: I suggest that the comment may have been suggested to the witness who is volunteering an answer and I move to strike it out, your Honor.

The Witness: I am sorry, I answered your question that way.

Mr. Nizer: I move to strike out the comment.

Mr. VanVoorhis: That appears as an amendment to the deposition, the EBT testimony, and whether that was because the reporter did not correctly state what he testified at the time or whether it was an amendment made when he signed the deposition, I don't know, and I don't thing it is particularly important, but this appears right in there as amended, for whichever reason. It appears in the deposition and I don't think it is fair cross examination.

Mr. Nizer: I respectfully submit that that objection isn't a fair objection and it outlines to the witness that which he has already rejected, that he never made a change so far as he can recall.

The Witness: That isn't true.

Mr. VanVoorhis: The witness did not state that.

The Witness: I did not state that. When you asked the question, you said any specific amount and there was no specific amount. Up to 50 per cent doesn't mean any (342) specific amount.

* * *

Q. A moment ago, Mr. Allen, I asked you whether you changed the answer "No" and you said that you had not. A. I said I didn't know. I haven't got the deposition in front of me. But I know there was a correction made,

up to 50 per cent, and I recall it now but I don't know just where it is in the deposition.

Q. Without having the deposition before you but dealing with the truth and your recollection of it, did you know that you had made—that there is, not "you"—(343) that there is a change with respect to the answer "No" in your deposition? Do you have any recollection of that? A. I would have to look at it. I can't recollect. I remember seeing where it is changed up to 50 per cent.

Q. Did you ever thereafter agree with Mr. Galic with respect to what percentage he would get of the alleged interest that Allen & Company had in the Libyan matter? A. No. The answer is no.

Q. Do you know that Mr. Galic claims to have 50 per cent of your interest in accordance with an arrangement he claims he made thereafter and without liability, only on the profits? Do you know that or don't you? A. Completely untrue.

Q. During the alleged meeting with Dr. Hammer, when you claim you called Galic, where was he at that time? A. What meeting is it, what date?

Q. August, 1966. A. Where was Galic? In Paris?

Q. And where were you? A. In our office.

Q. What time was that meeting? A. I don't recall the exact time.

Q. What approximate time of the day? A. I don't recall.

(344) Q. Was it morning or afternoon? A. I think it was afternon, but I can't be sure.

Q. Was it towards evening or— A. No, no. It was during the day, during the business day.

Q. But in the afternoon? A. In the forenoon.

Q. In the what? A. In the forenoon, possibly early noon.

Q. You recall that now definitely? A. No, I don't—yes, I do recall it was during the day and not very late.

(345) Q. And where was Mr. Galic— A. In Paris.

Charles Allen, Jr., for Plaintiff, Cross

Q. Where in Paris, at his home? A. At his home, yes.

Q. At his home. How soon was it after he talked to Dr. Hammer that you picked up the telephone and got him right on the phone? A. Almost immediately.

Q. Immediately? A. Almost immediately, yes.

Q. Was Mr. Galic usually at his home in those hours?

Mr. Greenspoon: I object to where Mr. Galic usually was.

Q. During that meeting, the alleged meeting with Dr. Hammer and this telephone call in August, 1969, did you at any time refer to the letter of July 16, 1965, what we have called the termination letter? A. Yes, I did.

Q. Haven't you testified— A. Let me correct that. I referred to the matter in the letter, not the letter itself.

Q. Did you refer to the substance of the letter? When you say matter, is that what you mean? (345) A. Yes.

Q. Haven't you testified that you never did on that occasion? A. That I never did what?

Q. Refer to the substance of the July 16th— A. I told—

Q. Haven't you so testified, just answer my question. A. Have I—have I testified?

Q. Yes, previously, that you did not refer to that letter. A. Not that I know of.

Q. Let me read to you from page 147 of your deposition:

"Q. On that occasion, did you refer to the July 16th letter in substance or any other way is my question. A. No."

Did you make that answer to that question? A. Yes, if it is in there, it is right.

Q. Was it correct when you made it? A. That is correct.

Charles Allen, Jr., for Plaintiff, Cross

Q. Do you want to change the testimony you gave a few moments ago? A. I testified—no, I don't want to change my (347) testimony that I gave yesterday.

Q. Which is correct, the testimony you gave a few moments ago— A. The question is—

Q. —or the deposition. A. That you never did.

Mr. VanVoorhis: I don't object to his asking what is the fact but to ask the witness to compare which is correct, I believe, is not proper cross examination.

The Court: Sustained.

Q. Did you ever change the answer to the question "On that occasion did you refer to the July 16th letter in substance or any other way is my question. A. No."

Did you ever change that— A. I can't tell that without examining the deposition.

Mr. Nizer: Will counsel concede he never made a change on that so we can save time?

Mr. Greenspoon: So conceded.

Mr. Nizer: And that that list of changes was executed, signed by Charles Allen on the 16th day of December, 1970.

Mr. Greenspoon: Are you asking us to concede that?

(348) Mr. Nizer: Yes.

Mr. Greenspoon: Yes, surely.

Q. Did you ever confirm in writing to Galic your offer to give a share of your claimed interest to him? A. No.

Q. Did you ever write to Dr. Hammer stating that you had given a share of your interests to Mr. Galic? A. Dr. Hammer was there when I made the offer.

Q. I asked you, did you write it? A. No.

Q. Did you prepare a memorandum for the file, for your file of the fact that you had made this proposal to Galic? A. No.

Q. Did you make a recommendation for your file of the entire meeting and the alleged admission of Dr. Hammer or consent to this arrangement? A. No.

Q. Are you familiar with the complaint in this action verified by your brother on October 13, 1967? Generally at least? A. I'm not familiar with it. I know the motive of it but I don't know the insides to the complaint.

Q. Do you know whether that complaint and will (349) counsel accept the fact that that complaint does not set forth any Galic interest in the Libyan concession involved in this lawsuit, is that conceded? A. I don't know.

* * *

Q. Was this action your action in this case commenced on Galic's behalf as well as yours? A. No.

Mr. VanVoorhis: Again, I submit that is a question of law.

Q. Has he an interest in the outcome of this lawsuit so far as the fact is concerned to your knowledge?

Mr. Greenspoon: That is objected to.
The Court: Overruled.

A. No.

Q. None at all? (350) A. No.

Q. If you did recover anything in this action, you would owe Galic nothing? A. That's correct.

Q. Weren't you present when Galic testified he had a portion of your recovery, if any, in this case? A. No.

Mr. Greenspoon: That is objected to. Galic did not so testify.

The Court: And even if he did, the objection is sustained.

The Witness: He knows I was not there besides.

Q. Now, yesterday, Mr. Allen, you were asked by me whether Allen & Company offered to pay to Occidental

25 per cent of the settlement made between Galic and Occidental. Do you recall that question was put to you? A. No, I don't recall it.

Q. Well, I ask you today, if you don't recall it, did Allen & Company ever offer to Occidental to pay 25 per cent of the settlement— A. Yes.

Q. —paid to Galic? A. Yes.

Q. To whom was that offer to pay 25 per cent of (351) the settlement made? A. To Mr. Hammer.

Q. Where did you offer it? A. In the original agreement plus the fact when he was in the office.

Q. The original agreement, I take you are referring to the December 17, 1964, letter? A. That is correct.

Q. And you are relying on that letter, whatever the legal effect is, for your having an obligation to pay 25 per cent, that's what you mean by that answer, I take it? A. That's correct.

Q. Did you at your August 19, 1966, meeting with Dr. Hammer tell him that you were ready to pay 25 per cent? A. No, he didn't ask.

Q. He didn't ask so you didn't tell him? A. No.

Q. In 1966, did you know the amount of the settlement and, therefore, how much 25 per cent would amount to? A. When in 1966?

Q. August. A. No.

Q. Yesterday I showed you Exhibit 188 which was (352) Mr. Galic's letter to you in which he— A. Just let me correct that. August, not of the time he was in the office. I knew it later in August.

Q. You did know it later in August? A. I knew it later in August.

Q. The amount of the settlement? A. That's correct.

Q. And you knew that because you received a copy of the settlement from Mr. Galic? A. No, I never got that copy.

Q. How did you know the settlement— A. Either from Dr. Hammer or from Mr. Galic, I forget which.

Q. Did you ever receive a photostatic copy of the settlement from Mr. Galic? A. I have no record of it.

Q. In Plaintiff's Exhibit 188, Mr. Allen, Mr. Galic writes to you:

"I settled with Dr. Hammer and I sent you a photostatic copy of my settlement."

And you say you never received that? A. I so testified, yes.

Mr. VanVoorhis: This is repetitious, your Honor.

(353) The Court: We went over this yesterday. Once there is some new matter with respect to it—

Mr. Nizer: I do, your Honor. That's the reason I raise it.

The Witness: I did not say I never received it. I say I may have but we have not got it in the file.

Q. Didn't you testify yesterday that you never saw that photostatic copy and are you now— A. Yes, I may have received it, he said he sent it to us. We may have received it. We couldn't find it in the file, is what I think I originally said.

Q. Having received it in some form or another, did you send a check or offer through a letter to Dr. Hammer to pay 25 per cent of that specific amount?

Mr. VanVoorhis: That is objected to, your Honor, as unfair cross examination. It assumes that he did receive it. There is no basis.

Mr. Nizer: I said he knew the amount, whether he got it or not.

The Court: I now understand from the witness' last answer that he said he did see a copy or may have received it—

The Witness: I say I may have received it.

The Court: I remember the testimony on this (354) subject yesterday. I think you said you did not receive it.

The Witness: I have no record of it.

The Court: I don't think that was your testimony yesterday, that you had no record of it. The testimony was that you had not received it and there was a little controversy on the part of the lawyers as to when you may have received it and I think Mr. Greenspoon said he had to get it from somebody. First the somebody appeared to be somebody outside the case and then the suggestion was he may have gotten it from Mr. Nizer, am I correct about that, Mr. Greenspoon?

Mr. Greenspoon: Yes, you are, your Honor.

The Court: I would like to get an answer at this point. If you don't have a recollection—

The Witness: I have no recollection of it.

The Court: The way the answers are coming in, I am frank to say they are sort of equivocal when you get around to analyzing them. I remember this testimony yesterday. I think there was almost a needless hassle between the lawyers at the time.

There is a reference in this letter addressed to you of August 29th by Mr. Alic, in which he said, I settled with Dr. Hammer. I sent you a photostatic copy (355) of my settlement.

The simple question is, did you receive the settlement to which he referred in that letter?

The Witness: May I explain it to you? We turned our entire files over to our attorney and I don't recall ever receiving it.

The Court: I will accept your answer, you turned it over. The answer should be either you did receive it or you have no recollection, that you don't recall.

The Witness: I have no recollection but at the same time—

Mr. VanVoorhis: I believe this is on the record that he has no recollection of having received it.

The Court: No, his immediate answer to my question was, he turned over the entire file to the lawyers.

Mr. VanVoorhis: He said this afterward.

The Court: I think we will move along a bit more expeditiously if you listen to the question and answer it to the best of your present recollection.

Q. My last question on this, and I will not pursue it further--

Mr. VanVoorhis: I want to make sure that (356) the witness' last answer is on the record.

The Witness: I have no recollection of having received it.

Mr. Nizer: May I rephrase my last question?

Q. At some point you say you became aware, whether through a copy of the photostat letter or through some conversation of the specific amount of the settlement between Mr. Galic and Occidental. A. That's right.

Q. When you became aware of it, did you send any letter enclosing a check or offering a check for 25 per cent of that settlement to Dr. Hammer? A. No.

The Court: When did you become aware of the amount of the settlement?

The Witness: I guess it must be before the end of August.

The Court: 1966?

The Witness: Yes. The date of the letter because he mentions August 20th we talked on the phone so he must have told me what it was.

* * *

(360) By Mr. Nizer:

Q. P158 for identification is what we have referred to as the Kabazi letter. Do you know what that is? A. Yes.

Q. Now, referring to that letter—I will call it Kabazi letter—did you receive a copy of the Kabazi letter in the mail? A. Yes.

Q. I read the following question and answer at Page 143:

(361) "Q. Now, did you receive this document in the mail? A. I don't recall."

* * *

(362) Q. I read to you from 413. "Did you receive this document in the mail? A. I don't recall."

Q. Was that answer correct that you didn't recall it at the time I asked you about it? A. What document?

Q. The Kabazi letter. A. Does that say it in there?

Q. It says "I don't recall." I just read it to you. A. I would like to know what I am testifying about.

Q. Will you please assume—

(363) Mr. VanVoorhis: I think the witness is entitled to look at the entire deposition.

Mr. Nizer: Your Honor, this would be an unseemly proceeding if that were so.

Q. I have read to you a question and answer and your counsel could read any other question and answer that would explain it or change it, but my question to you, Mr. Allen, is was that answer that I have just read to you, that question which I have just read a correct statement at the time you made it when you said I don't recall whether I received it in the mail? A. I would like to see the deposition because I think something was read to me the other day that was not related to it and before I answer it I would like to read it.

Q. Please leave it to your counsel and his Honor about other things you may see. Will you answer my question. I respectfully ask you to. When you made that answer "I don't recall whether I received it in the mail" was it correct so far as you say, when you made that answer to that question? A. I don't know—I answered it in the mail in a prior question.

Q. Let me read a whole series of it so that you (364) will know I covered everything? A. Why don't you read where I received it in the mail.

Mr. VanVoorhis: Page 107.
The Witness: Page 107.

Q. Do you know the page?

The Court: 107 of the deposition?

Mr. VanVoorhis: That's right.

The Court: Let me see it, please.

Mr. Nizer: 107?

Mr. VanVoorhis: That's right.

Mr. Greenspoon: Through 109. It starts at 107.

The Court: Where does it state it came in the mail?

Mr. Greenspoon: Lines 13 through 17, your Honor.

The Court: Which was Exhibit 9 that is referred to there?

Mr. Greenspoon: That was a copy of the Kabazi letter, your Honor.

Mr. VanVoorhis: This same photostat.

Mr. Greenspoon: I don't know which one it was. It is not the one your Honor that has been marked here (365) for identification. It is a different copy of it.

Mr. Nizer: Nor do I believe that the content refers to the letter originally sent by Galic to him. Counsel said he produced a document that he had

a copy of. But in any event may I not show that at Page 413 he said he didn't recall receiving it in the mail?

The Court: Yes, you may. Counsel may show his other answers on the same subject too.

By Mr. Nizer:

Q. Was that delivered, was the Kabazi letter delivered to you by hand? A. I received it in the mail.

Q. Didn't you testify when I asked you whether it was received by hand "I don't recall," whether it was received by hand? A. That is very possible.

Q. Was the copy of the Kabazi letter sent to you or to your brother Herbert? A. It was sent to me.

Q. When you were asked that question didn't you say "I don't recall"? A. It's possible.

Q. Was the copy of the Kabazi letter received in the United States or abroad? (366) A. It was received here.

Q. When you were asked that question, didn't you answer "I don't recall"? A. That's right. I have checked upon it since.

Q. You have what? A. I have checked. That's correct.

Q. When did you check on it? A. I checked with Mr. Galic and since this action started.

Q. What year would that be, the action started in '67. So when did you check it, how soon? A. Just recently.

Q. How recently did you take that up with him? A. During the last year.

Q. Did you ever write a letter correcting your answer or tell your counsel that you wanted to correct that answer? A. No, because I had a correct answer in there.

Q. That you didn't recall. A. I had a correct answer that I received it in the mail from Mr. Galic.

Q. When you talked and checked with Mr. Galic, did you ask him the date of that covering letter of that Kabazi letter? (367) A. I didn't ask him that at all. I asked him if he mailed it to me and he said yes.

Q. Did he tell you where he mailed that letter from when you checked with him? A. He mailed it from Paris to my office.

Q. Did Mr. Galic tell you that he actually mailed the letter only to Holtzmann, your counsel, and not to you? A. That's a lie.

Q. Did he tell you that, whether it is a lie or not, did he tell you that? A. We didn't have any further discussion except as to how—where he mailed the letter from and to.

Q. Have you ever read Mr. Galic's sworn testimony? A. I have not.

Q. On this subject? A. I have not read his testimony at all.

Q. Was a copy of the Kabazi letter enclosed with a covering letter?

Mr. VanVoorhis: I think we have been all over this, your Honor.

Mr. Nizer: No, I don't think we have.

A. I know of no covering letter.

Q. Pardon? A. I know of no covering letter.

(368) Q. Did you ever ask Galic whether he sent you the Kabazi letter with a covering letter? A. No.

Q. When you testified at the deposition instead of no, didn't you say "I don't recall"? A. You just asked me a direct question.

Q. Yes. A. Repeat the question.

Q. You said you recalled, now you don't know? A. I said subsequent to the deposition.

Mr. Greenspoon: Your Honor, I think at this stage, Mr. Nizer should be required to read those questions and answers which he says were different.

Mr. Nizer: I am not required, but I will be glad to. I will read this one.

Mr. Greenspoon: On Page 107 the witness testified flatly there is no covering letter that I remember.

Mr. Nizer: All right, look at 585, much later than 107, and I read at the bottom of the page:

"Q. Did you ever ask Mr. Galic since this suit was instituted as to whether he had sent you a covering letter for the D9 document which is the Kabazi letter? A. I don't recall."

Mr. Greenspoon: That was two years. This (369) deposition was taken two or three years before this conversation that he had with Mr. Galic.

The Court: Mr. Greenspoon, you are making statements but again I have to repeat counsel have a right to question a witness with respect to alleged prior inconsistent statements even though there are other statements consistent with his testimony, and other statements that are contradictory of his testimony.

I don't understand some of these objections.

Mr. Greenspoon: No, your Honor, the witness had testified—

The Court: You make an explanation of his answer.

Mr. Greenspoon: No, your Honor, the witness had testified that he had this conversation about a year ago, so how could something he said three years ago—

The Court: That is a matter of argument for you when you get up to cross examine to argue to the Court.

Mr. Greenspoon: All right, sir.

The Court: I have never understood that any lawyer representing any side is debarred from

questioning the witness from prior inconsistent statements or even showing inconsistencies on his original examination and (370) answers then given. I think the lawyers ought to direct their attention to matters that are really germane and furnish a basis for proper objection. I think we will move along a little more quickly.

Q. Since you say—

The Court: I think for example, that a witness stated on a prior deposition that he doesn't recall and presently states he does recall and gives a positive answer is a subject for cross examination. Was his answer at the time a truthful answer that he didn't recall? It could well have been. Other matters may have refreshed his memory since or it could be that his answer originally given was not a truthful answer.

I hope we are not required to conduct a course in evidence here.

By Mr. Nizer:

Q. If as you say there was no covering letter when you received the Kabazi—if there was no covering letter as you claim when you got the Kabazi letter at the time you got it, how did you know it was sent by Mr. Galic?

Mr. VanVoorhis: I object to that as hypothetical.
(371) The Court: I will allow that.

A. How did I know it was sent by Mr. Galic?

Q. Yes, if there was no covering letter that you can recall. A. I didn't open the mail.

Q. Pardon? A. Let me see the letter and then I will see if I could—

Mr. Nizer: Will you show him a copy of it or shall I?

Mr. Greenspoon: I will. It will save time.

Mr. VanVoorhis: We don't want to be accused this time of showing it to him in order to direct his answer. That was the remark that was made the last time we showed him this letter.

A. It is addressed to Mr. Galic.

(372) Q. How do you know that Mr. Galic sent it to you if you had no covering letter? A. Who else would send it to me other than Mr. Galic? He received it and he sent me a copy of it.

Q. You assume that. Just by getting a blank piece of paper, you assume he sent it to you? A. I don't think someone else would send it to me. It is addressed to Mr. Galic and he sent a copy to me.

Q. Did you ask Mr. Galic to obtain such a letter as the Kabazi letter? A. No.

Q. Did you ask Mr. Galic to send you a copy of the Kabazi letter? A. I may have. I don't recall.

Q. Did you have any conversation with Mr. Galic concerning the Kabazi letter before a copy was sent to you? A. No.

Q. Did you read the Kabazi letter after receiving it? A. I assume I did.

Q. After reading it, did you discuss the Kabazi letter with your brother Herbert? A. I assume so.

Q. Do you know whether you did or you did not? (373) A. I don't recall at this point. I probably did.

Q. Did you discuss the Kabazi letter with your counsel after you read it? A. I don't recall.

Q. Did you discuss the Kabazi letter with Mr. Galic at any time after receiving it? A. I may have, but I don't recall.

Q. You don't recall? A. I don't recall.

Q. Did you ever write Mr. Galic acknowledging the receipt of a copy of the Kabazi letter? A. No.

Q. Did you discuss the Kabazi letter with Dr. Hammer at any time after you received it? A. I don't recall.

Q. Pardon? A. I don't recall.

Q. Did you discuss the Kabazi letter with any other representative of Occidental than Dr. Hammer? A. Same thing, I don't recall.

Q. Did you ever send Dr. Hammer a copy of the Kabazi letter? A. I don't recall.

Q. Did you ever make any copies of the Kabazi letter? (374) A. There have been copies made. I don't know who made them.

Q. Well, you were asked that question on the deposition and did you say "I don't recall that either"? A. I don't recall. I just said I don't know who made them.

Q. I didn't ask you who made them, I asked you whether you made copies of them. A. I don't recall.

Q. Did you have anyone else make a copy of the Kabazi letter for you? A. I don't recall.

Q. Did you ever send a copy of the Kabazi letter to your attorneys after receiving it? A. I don't recall.

Q. Did you ever send a copy back to Mr. Galic after you received it? A. No.

Q. Did Mr. Galic ever ask you to send him a copy of the Kabazi letter? A. Not that I know of.

Q. Were you aware of the Kabazi letter at the time of the underwriters' questionnaire on May 11, 1966, submitted in connection with that $62,000,000 debenture (375) issue? A. Yes.

Q. Didn't you testify when I asked you that "I don't recall"? A. Well, as of now, I recall.

Q. At page 416 I asked you the following:

"Q. Now, my question is, were you aware of Exhibit 9"—that is the Kabazi letter—"on the date of the underwriters' questionnaire, which is dated May, 1966? A. I don't recall."

Did you make that answer? A. Yes, I did.

Q. Did you ever change that answer? A. I can't answer that.

Q. Did Mr. Galic deliver to you or to your counsel the original of the Kabazi letter for the purpose of this lawsuit? A. Repeat that question?

Q. I will, sir. Did Mr. Galic deliver to you or to your counsel the original of the Kabazi letter for the purpose of this lawsuit?

Mr. Greenspoon: I think we ought to split the question in two, your Honor.

Mr. Nizer: All right, I will do that too.

(376) Q. Did Mr. Galic ever deliver to you the original of the Kabazi letter for the purpose of this lawsuit? A. I don't recall.

Mr. VanVoorhis: Well, I think that is objectionable for the purpose of this lawsuit. The rest of the question I have no objection to.

The Court: The witness has already answered "I don't recall." The witness answered before you made your objection, "I don't recall."

Q. Do you know when, if ever, the Kabazi letter was given to your counsel, Mr. Greenspoon? A. No.

Q. Pardon? A. No.

Mr. Nizer: I would like counsel to concede that by letter dated November 16, 1972, Mr. Greenspoon advised Judge Cooper they first saw the original Kabazi letter "some time in the summer of 1967." Do you so concede, sir?

Mr. Greenspoon: With the proviso that that is when we were first retained. I saw the original for the first time in the summer of 1967, when we were retained as counsel. Prior to that date, we had absolutely no relationship, legal or otherwise,

with Allen & Company, and (377) on that statement, I will so stipulate.

Mr. Nizer: All right, I accept that.

Mr. Greenspoon: That is the original we are talking about.

Mr. Nizer: Yes.

Q. Now, Mr. Allen, your counsel before Mr. Greenspoon's distinguished office was retained in this matter was Mr. Holtzmann, right? A. That's correct.

* * *

(378) Q. Now, only a few more questions, sir.

Before Mr. Galic called you in the spring of 1964 concerning Libya, had you had any prior business dealings with him? A. Had we any prior business dealings with him?

Q. Yes. A. Yes.

Q. They were in machinery deals, plastics, smog control, and many other things, right? A. Well, I don't know whether they came to—there were different business dealings we started looking into and investigating and I don't know whether any of them came to any fruition.

Q. Over a period of 10 or 12 years before 1964 in the various proposals and negotiations, deals, none of them came to any fruition or were successful, is that (379) right? A. I can't determine that because those we didn't go into probably he was successful with other people.

Q. I am talking about your negotiations or deals with Galic. Did any of these proposals or deals over a period of 10 or 12 years come to fruition or were they successful? A. I don't know whether they were successful or not.

Q. I am talking about Allen & Company's relationship with Galic. A. There were very few deals. There was one smog control that we worked on for a while, but I

don't know what has happened to it. We just didn't continue with it.

Q. None of them crystallized of any kind into any profitable arrangement that you ever had in the past with Mr. Galic up to the time of this Libyan matter?

Mr. Greenspoon: Objected to as irrelevant.

Mr. VanVoorhis: Yes, I think it is irrelevant. If by that he means to imply the idea—it has no probative force as to this transaction.

The Court: I am doubtful of its probative force, but we will take the answer anyway.

(380) Q. I read the following questions and ask you if you made the following answers, at page 60—

The Court: You don't have an answer to the question I allowed.

Q. Did they ever come to any success or fruition? A. I can't talk about success because if we dropped it, someone else took them on. I don't think any of them came to any fruition that we looked at.

Q. And you have never had a deal prior to 1964 when he called you about the Libyan matter— A. Oh, I couldn't answer that. I didn't go back 10 or 15 years.

Q. Let me read the following and I won't press it further. Did you make the following answers to the following questions:

"Q. Did he," that's Galic, "ever discuss whether he had"—

Excuse me, I will begin at another point:

"Q. Prior to that conversation between you and Mr. Galic," that is, on Libya, in 1964, "had you ever or any one of the Allen organizations had any business dealings with Galic? A. Do you want me to answer for myself?

"Q. Both ways. (381) A. Yes. We had indirectly done some business with him and had deals through him constantly.

"Q. What kind of deals had you personally, since you are answering for yourself, I take it, just the general nature? I don't want you to go into details on this. A. Machinery deals, plastic deals, smog control devices, other deals which I just don't recall at the minute.

"Q. What was Galic's participation in those matters, if any? A. None of them crystallized.

"Q. You mean efforts were made to close such transactions? Were those in Libya or other places? A. Those were in other places.

"Q. Where? A. In France, in Austria. I just can't recall where they were, in Libya or not, whether any were in Libya or not.

"Q. Over what years were these various enterprises? A. Over the 15 years that I have known him.

"Q. That would be from when to when? A. Roughly 1952 on.

"Q. To 1967? (382) A. Yes, roughly.

"Q. None of these deals came to fruition, is that right? A. None of them came to any profitable basis, let's put it that way.

"Q. To what? A. To a profitable basis. There was nothing to divide up."

A. I just answered the same question. I told you they didn't come to fruition.

Q. Just listen to my question: Did you make those answers? A. Yes.

Q. Having made those answers and that being the fact, did you ever advise Dr. Hammer about this prior record that you had with Mr. Galic in all these matters? A. I don't know. I don't recall.

Mr. Nizer: That is all.

The Court: All right, gentlemen, we will take our mid-morning recess.

(Recess)

(383) *Re-direct Examination by Mr. VanVoorhis:*

Q. Mr. Allen, you were asked by Mr. Nizer—

Mr. Nizer: I may not be able to hear you. I hope you will keep your voice up. I haven't been able to hear you.

Mr. VanVoorhis: I will endeavor to do so, sir.

Q. You were asked by Mr. Nizer toward the close of your cross examination with relation to prior business matters which had been brought to the attention of Allen & Company by Ferdinand Galic? A. That's correct.

Q. You also were referred to your testimony in your EBT. I ask you whether you were asked at Page 62—I will show you the transcript of the testimony.

Mr. Nizer: May I hear it, please, as you talk. I can't hear you.

Q. Question by Mr. Nizer. "In other words, they were all unsuccessful. A. Some. I didn't, they were ideas, companies. It was nothing that we completed.

"Q. Nothing completed? (384) A. Yes.

"Q. None of the deals were finished? A. Some of them we didn't go in. He brought different things to our attention."

Did you so testify in your EBT? A. Yes.

Q. And in relation to the so-called Kabazi letter to Galic which bears date of February 16, 1966, did you testify at Page 107 of your EBT as follows:

"Mr. Allen, looking at Exhibit 9 marked for identification, did you get a photostat?" Parenthetically, I will say that Exhibit 9 was the marking in the EBT for this same exhibit, which is 159 here. A. A photostat.

"Q. Is this the one you have? A. That's right.

"Q. Where is the covering letter that enclosed this photostat? May we have that, please."

And then there was—Mr. Greenspoon interposed a comment.

A. There is no covering letter that I remember.

"Q. This document that we have here isn't even folded. Where is the original if it was a photostat, where (385) is the original photostat that you received. Did you get it by mail? A. Yes."

A. That's correct.

Q. You so testified in your EBT? A. Yes.

Q. Did you likewise testify in your EBT at Page 109:

"Q. Looking again at Exhibit 9 for identification, who was it who sent this copy of that document or photostat of it to you? A. To me?

"Q. Yes. Yes. A. Mr. Galic."

Did you so testify? A. Yes.

Q. At Page 111 at Page 110 and 111, did you testify in your EBT:

"Q. Can you check with your secretary or anyone else as to how"—I beg your pardon. It refers to another exhibit. The question is withdrawn.

At Page 586 of your EBT, did you testify as follows:

"Q. Did you ever destroy any letter sent to you (386) by Galic, any letter? A. Never."

A. No.

Q. Did you so testify? A. Yes.

Q. Were you asked on cross examination with respect to contracts which you had with Dr. Hammer and in connection with this Libyan matter and whether it was not your brother rather than you who had these contacts?

And particularly in reference to a meeting which you testified that you had with Dr. Hammer in November of 1965. I will ask you whether or not on behalf of Allen & Company you had charge of the Moroccan phosphate and other projects? A. Yes.

Q. That likewise included a Holiday Inn and copper— A. That's correct.

Q. —projects. And the communications between you and Occi—I mean the communications between Allen & Company and Occidental regarding those matters were handled by you? A. That's correct.

(387) Q. And that was true, was it—was that true of the meeting in November, 1965, to which you testified in which you spoke of having had some communication with reference to the Libyan oil venture? A. Yes.

Q. Were you ever—I mean was Allen & Company, to your knowledge, ever at any time billed by Dr. Hammer or Occidental for any expense in connection with this Libyan Oil development?

Mr. Nizer: At what time, please.

Q. Ever?

Mr. Nizer: After July 16, 1965? May I have the time period?

Mr. VanVoorhis: At any time.

A. No.

Q. Were you informed by Dr. Hammer or by any other representative of Occidental prior to July 16, 1965, of any of the things which Occidental was doing or had done with respect to obtaining concessions of the Kingdom of Libya? A. No.

Q. Did defendant advise you of the agreements which it had made with Galic, Ogbi or DeRovin? A. No.

(388) Q. Did it advise you of vice-president of Occidental Vaughan's trip to Libya? A. No.

Q. Or Vaughan's report or reports made as a result of such trips? A. No.

Q. Or of Vaughan's conclusions that the Libyan venture was desirable and the economics attractive? A. No.

Q. Were you informed by Occidental or Dr. Hammer or any one on behalf of Occidental that the agreement with Lawler made in October 1964—

Mr. Nizer: I object to all this series of questions as not proper redirect and also leading.

The Court: Overruled.

Mr. VanVoorhis: I think the questions are proper, your Honor.

The Court: I overruled the objection.

Mr. VanVoorhis: Please read the last question.

(Question read.)

Q. —of the agreement with—

Mr. Nizer: I object to it.

Q. You may answer. (389) A. No.

Q. Or of the work which had been done by Occidental in preparation of the application to be filed with the Libyan Government July 29, 1965? A. No.

Q. Or of the acts performed by what is known as the Brenner group consisting of Brenner, Galic, DeRovin and Ogbi? A. No.

Q. You were not informed of what any of those people were doing in connection with the prosecution of the venture? A. No.

Q. You have testified, I think, that the books of Allen & Company, the plaintiff, were kept on a cash basis. A. That's correct.

Q. Mention was made this morning of the regular attorneys of plaintiff being the Holtzmann—being Holtzman. A. Weiss, Shepherd.

Q. Did you refer to Mr. Holtzmann personally alone? A. No, that is Holtzmann, Weiss, Shepherd.

Q. Mr. Deer, is he a member of that firm? A. Yes.

(390) Q. Coming to this questionnaire that has been referred to in connection with a $62 million bond issue—I don't have a reference to the number of that exhibit—looks like D8, did you fill out that questionnaire? A. No.

Q. Did you see it at any time before this action was commenced? A. No.

Q. Did you discuss it with anyone before the commencement of this action? A. No.

Q. With regard to the prospectus D11, did you ever prior to the commencement of this action see that prospectus or read it? A. No. No, I didn't read it.

Q. Did you ever see it before the action was brought, the prospectus?

Mr. Nizer: What is the answer?

A. I don't recall whether I saw it. I haven't read it.

Mr. VanVoorhis: He said he never read it and doesn't recall whether he saw it.

Q. Did you ever discuss the prospectus with anyone prior to the commencement of this action? (391) A. No.

Q. Who was Herbert L. Stern, whose signature appears on this questionnaire D8? A. He was the office manager and treasurer.

Q. Please speak a little louder. A. He was office manager, treasurer and executive vice-president of Allen & Company, Inc.

Q. Had he been with the partnership prior to the formation of Allen & Company, Inc.? A. Yes.

Q. For approximately how many years? A. 15 or 20.

Q. Did there come a time when he retired from the corporation? A. Yes.

Q. About when was that?

Mr. Nizer: I didn't hear that question.

Mr. VanVoorhis: About when was that?

Mr. Nizer: Thank you.

A. About three years ago.

Q. Do you know what the condition of his health was at that time? A. Yes, he had a stroke.

Q. Where is he now? (392) A. He is living in Florida.

Q. If you know, can you tell us what Mr. Stern's function was in connection with underwritings of either Allen & Company, the partnership, or the corporation? A. His responsibilities were to take care of all the financial activities, questionnaire, legal problems, see that it got to the proper places and proper lawyers and so forth, all the financial end of the story.

Q. What was his position with the corporation, do you know? A. He was treasurer and executive vice-president.

Q. Did you ever discuss with him the prospectus Exhibit D11 at any time, prior to the commencement of this action? A. No.

Q. Did you ever discuss with him D8, the underwriter's questionnaire prior to the commencement of this action? A. No.

Q. Was he an experienced, responsible financial man in this context? A. He was and he had full authority to sign anything on his own, that's for the firm of Allen Company, Inc.

(393) Mr. Nizer: What is that?

The Witness: For the firm.

Q. Do you know whether or not he had similar authority for the corporation? A. I said that was for the corporation. I mean the corporation. At the time he was with us he had it for the firm also.

Q. Do you have any knowledge concerning whether or not Mr. Stern consulted Mr. Deer concerning the preparation of either of these exhibits, D8 or D11?

Mr. Nizer: Objection as hearsay whether he had knowledge of somebody else's consultation.

The Court: Overruled.
Mr. VanVoorhis: I think I am entitled to that.
The Court: I said overruled.

Q. You may answer. A. Is there a rule? Can I answer?

The Court: You may answer.

Q. The question is, do you know whether or not Mr. Stern consulted Mr. Deer concerning the preparation of D8 or D11? A. I didn't know at that time.

Q. Did you have any knowledge of whether or not he (394) did consult with Mr. Deer?

The Court: He said he did not know at that time.

A. I did not know at that time.

Q. Did you ever prior to the commencement of the action have any conversations with Mr. Stern about the Libyan venture which is the subject of this action? A. I don't recall.

Q. Do you recall any—

Mr. Nizer: What was the answer to that?
The Court: I don't recall.
Mr. Nizer: Thank you.

Q. You were interrogated this morning under cross examination with reference to any experience of plaintiff with any other oil companies. Had you had any such experience? A. Yes.

Q. In connection with the business carried on by either the partnership or the corporation? A. The partnership, yes.

Q. And will you tell us about that? A. Yes, we were in a drilling deal with Atlantic Richfield in Morocco. We participated along with Klehe & Company our past partners in getting the concessions in (395) Algeria for El Paso Natural Gas, which our group had a four per cent overriding. We were partners though in Atlantic Richfield. I forget the exact percentage we had. And then

we had, through one of the companies that we controlled, that we organized, we were in with Standard of Indiana in some concessions gained through Klehe and ourselves which we acquired in Mauretania, and which our company had a 40 per cent interest for the first two wells in which $12 million was spent and lost, and then a 20 per cent interest in the next well in which $3 million was spent and lost. We still retain the interest in the concession until I don't know whether it was 1975 or 1976.

There were various other sundry ones that are different drilling deals we have gone in from time to time. I just haven't got them in my mind at the minute.

Q. I call your attention to Page 32 of the prospectus which has been put in evidence hereby the other side, D11, at the top of the page where reference is made to an agreement by Occidental with an agency of the Kingdom of Morocco under which Occidental has conducted a preliminary feasibility study for the construction and operation of a chemical fertilizer complex in Morocco.

Was Allen & Company—pardon me—does that (396) appear to be the same Moroccan venture about which you testified yesterday and to some extent this morning? A. Yes.

Q. And what relationship, if any, did Allen & Company have in that with Occidental? A. 25 per cent interest.

Q. I show you a letter signed by Armand Hammer, president, Occidental Petroleum, dated April 5—

Mr. Nizer: This is an exhibit, please?

Mr. VanVoorhis: I expect that it soon will be. Yes, it is P196.

Mr. Nizer: May I see it?

Mr. VanVoorhis: It will be 197.

Mr. Nizer: Would you wait one second, please. Your Honor, before the questions are submitted, these letters 196—and I take it 197, Judge VanVoorhis?

Mr. VanVoorhis: That is correct.

Mr. Nizer: —are dated April 25, 1967, and April 11, 1967. Therefore I object to them as long after the events which are material in this case, completely collateral and irrelevant.

Mr. VanVoorhis: I will withdraw the offer of it for the moment, and I will ask Mr. Allen if he can (397) tell us the approximate date when Allen & Company and Occidental went into this venture in Morocco, I mean when they—

Mr. Nizer: Objected to as irrelevant and immaterial.

Mr. VanVoorhis: I will connect it up very quickly.

The Court: I will take it subject to connection.

A. They started approximately early in 1965.

Q. Do you mean the discussions and negotiations? A. The discussions, yes. The negotiations continued through the end of the year. I haven't got the exact date.

Q. Some time the latter part of the year that they matured into— A. I think there was some letter I saw yesterday.

Q. You think what? A. Some letter that was shown to me but I haven't got it.

Q. I think it was November, if I am not mistaken.

Q. I think it was November, if I am not mistaken. A. If I can see that letter, I can answer that.

Q. You can have your letter. A. It was a letter from Occidental.

(397a) Mr. Nizer: May I have the number of that?

Mr. VanVoorhis: I show the witness Exhibit P147.

A. November 3, 1965.

(398) Mr. VanVoorhis: At this point, I would like to call your Honor's attention to the circumstance

that in this prospectus, prepared by the defendant, there is no mention of any participation by Allen & Company in the Moroccan venture about which the witness has just been testifying.

Q. You were asked concerning Exhibit 12, which is the so-called agreement letter of December 17, 1964—Exhibit P71—I am afraid I had the number of the EBT—you were asked by Mr. Nizer on his cross examination whether this letter contained all of the agreement between the parties.

Mr. Nizer: Will you be good enough to give the answer, if you are going to go ahead with it?

Mr. VanVoorhis: Yes. The answer was that it did.

Mr. Nizer: Thank you, sir.

Q. You testified, I believe, that you were not present in London in September, 1964, when the agreement was discussed and made, as we contend, in London, between your brother Herbert and Dr. Hammer? A. That's correct.

Q. I call your attention to the language in this letter, P71, that reads, "Confirming our recent (399) conversation regarding possible concessions in Libya, we agree to the same arrangements with you on the possible second concessions as on the first concessions," and so forth. Did you interpret that reference to the first concessions as incorporating the oral agreement made in London between Dr. Hammer and your brother Herbert? A. Yes.

Mr. Nizer: I object and move to strike out that answer. That is a violation of the parol evidence rule and also on the ground that he can't interpret it—

The Court: I sustain it as far as his interpretation of it is concerned.

• • •

(400) Q. In relation to my last question to you, Mr. Allen, may I refer you to page 18 of your EBT, and as the EBT at this point was originally transcribed it appears to state, referring to this letter of December 17, 1964:

"Q. Does it contain all the understandings between the parties? (401) A. Yes."

In correcting this transcript, did you add, "to the extent in writing, to the best of my knowledge"? A. Yes.

Q. And the next question was:

"Q. It does contain them all? A. Yes."

And to that, in making your correction, did you add, before signing this, "to the extent in writing, to the best of my knowledge"? A. Yes.

The Court: I must have a different copy altogether. I don't see "to the best of my knowledge"—

Mr. VanVoorhis: It is in the corrections, your Honor.

The Court: Well, I have one with a handwritten correction here. The addition was "to the extent in writing, so far as I know." Where do you get "to the best of my knowledge"? How many copies are there of these corrections? What are you reading from there?

Mr. VanVoorhis: I will show you what I was reading from (handing).

The Court: I have a copy that is quite different. I don't know which is the original or not.

(402) Mr. VanVoorhis: I don't either, at the moment, and I don't regard it as a matter of basic importance, but I thought I would bring it out.

I am informed that the one that your Honor has is the correct one and so, for the sake of the

record, if I may, I will correct the revision in this manner:

"Q. Does it contain all the understandings between the parties? A. Yes, to the extent in writing so far as I know.

"Q. It does contain them all? A. Yes, to the extent in writing, so far as I know."

A. Yes.

Q. Is that a correct version of your revision? A. Yes.

* * *

Re-cross Examination by Mr. Nizer:

(406) Q. Going to the questions you were asked. Judge VanVoorhis asked you, at page 586, I think he read, about your destroying covering letters or documents. A. He didn't ask me that at all. Would you read the question?

Q. I didn't say you answered that. He asked you about that subject matter. A. No, he didn't.

Q. What do you understand— A. Read the question to me.

Q. Please, what do you understand—I am asking you a question. A. Read it. Read it.

Q. What was the question you understood Judge (407) VanVoorhis asked you? A. Did I destroy any letters.

Q. Any letters? A. The answer is no. That's not covering letters. That's body letters.

Q. And didn't he ask you specifically whether you destroyed any letters by Galic to you, from Galic to you? A. He read from the deposition. My answer was no.

Q. I asked you what you understood the question to be. A. My answer was no.

Q. Let me go on until we get the right number of this page I will resume this in a moment.

Mr. Greenspoon: 586.
Mr. Nizer: Is it 586?
Mr. Greenspoon: Yes.

Q. In other words, if I understand you to say that while you were destroying covering letters from Galic, you did not destroy the letter which was attached to the covering letter, is that your position? A. I don't destroy letters. I might destroy a covering letter on different things such as covering (408) letter which have no meaning, I destroy. A letter I would not destroy.

Q. Did you answer at page 140 of this trial as follows:

"The Witness: Could I just answer the covering letter. If there was a covering letter with it, it would have been thrown away because the letter itself states the subject."

Did you make that answer? A. That's correct.

Q. And his Honor said:

"You would have thrown away a covering letter that—

"The Witness: We don't keep covering letters. The letter itself is the subject matter and we don't keep covering letters where the letter itself is the subject matter."

A. That's correct.

Q. The court then said:

"I believe there is in evidence a communication to your firm—

"The Witness: There are some, I admit, but most we don't keep."

His Honor then said:

(409) "There was a covering letter that apparently you didn't throw away. There was a pretty important document—

"The Witness: Yes, if the covering letter says I am enclosing the following, I would throw it away."

Did you make those answers to his Honor? A. Yes.

Q. You testified to a question by the judge, Mr. VanVoorhis, that you were in charge of the Moroccan matter and therefore all conversations and communications on that matter, as I understood the substance of your testimony on that subject with D. Hammer was with you, since you were in charge of it, that correct? A. That's not correct. I didn't—

Mr. VanVoorhis: Just a moment. I object to that as not correctly stated—

The Court: The witness stated it was not correct.

A. It's not correct.

Q. Was Herbert Allen involved in the Moroccan matter? A. I testified yesterday or the day before—

Q. Just tell me whether he was involved. I want (410) to be brief, Mr. Allen. A. Was he involved no.

Q. Did he communicate with Dr. Hammer with respect to the Moroccan matter as far as you know? A. As far as I know, no.

Q. Did Dr. Hammer write any letters to Herbert on the Moroccan matter as far as you know? A. No, as far as I know. I don't know what he wrote to Herbert. I haven't got the letters in front of me.

Mr. Nizer: Will counsel please show the witness P149 addressed to Dear Herbert from Occidental and an enclosed cable which is exhibit—which is November 26, 1965.

Q. I ask you to look at that which deals with the Moroccan matter and ask you whether Dr. Hammer didn't communicate on that business matter directly with Herbert Allen, Dear Herbert. A. It doesn't mean

that. He may have sent it to Herbert and Herbert would refer it to me if it was my matter. As I testified, Marvyn Carton took care of the whole Moroccan matter.

Q. Were there other letters in which Dr. Hammer addressed themselves to the Moroccan matter by writing (411) to Herbert Allen instead of you? A. It could be. I don't know. They would be referred to the proper party if they were.

Q. In other words, while Herbert was in the matter and there was communication with him, he would also take it up with you? A. I didn't say that. I said it was under Marvyn Carton. He would send it to me and to Marvyn Carton.

Q. Did you at any time after July 16, 1965, and prior to January 31, 1967, write to Occidental and ask to be informed about what was happening in Libya? A. I don't think so.

Q. Did you write anything to Occidental between those dates asking what expenses or costs were being incurred? A. No.

Q. Counsel asked you a series of questions on the subject of whether Dr. Hammer advised you of developments in London, do you remember those questions, the negotations in 1964? A. No, I don't recall that.

Q. You don't recall that a few moments ago, maybe a half hour ago, Judge VanVoorhis asked whether Dr. Hammer wrote to you or kept you informed— (412) A. Yes, I recall that. You said in London.

Q. Yes, I say in London. I say it again. Of the negotations that took place in 1964 in London. A. Did Dr. Hammer write to me from London, no.

Q. Maybe I haven't made myself clear, I'm sorry. A. You said write.

Q. You testified in response to a re-direct examination that Dr. Hammer never reported to you, orally or in writing, I think the question said, I am not sure, concerning the development in London in 1964 with Ogbi, DeRovin, and so on.

Mr. Greenspoon: That was not the question he was asked. He was asked about the agreements made with those three people and not what Mr. Nizer is suggesting. I object as improper re-cross examination.

Mr. Nizer: I do not agree with counsel although he may be right. I do not have the minutes.

Q. What is your recollection as to that subject matter, never mind what you were asked? A. Ask me a question and I will answer.

Q. Isn't it a fact—let's get to the point. Isn't it a fact that Herbert Allen was in London during these negotations? A. That's correct.

(413) Q. Isn't it a fact he was there when the contracts were made with Ogbi and DeRovin and— A. I wasn't in London. I cannot answer.

Q. Didn't Herbert report to you of those events in London, that took place in London, didn't he report it to you— A. Not the events you have mentioned.

Q. He never told you about them? A. Not those events.

Q. In other words, after the conference in London with Galic, Ogbi, DeRovin, when Herbert Allen returned to New York, he didn't advise you of having made these arrangements between Occidental—of the arrangements between Occidental, Ogbi, DeRovin and Galic, he did— A. Do you want me to tell you what Herbert told me in London?

Q. No, you answer my question, please. Did he report to you of the fact that— A. He reported to me what happened in London. He reported—

Q. No, no.

Mr. VanVoorhis: Just a minute. If the witness is being asked what Herbert reported, he should be allowed (414) to state it.

The Court: He did not ask him what Herbert reported. The question was perfectly clear. Did Herbert report to him.

Mr. VanVoorhis: On everything that happened in London.

The Court: The question is clear to me and the witness does not have the right to volunteer information because he wants to give information. I am perfectly clear what is going on here. Let's not spend a lot of time on it.

Put your questions, please, and we will get an answer and we are taking our luncheon recess.

Q. Did Mr. Galic report to you of what was taking—what had taken place in London in 1964? A. He reported something to me.

Q. Did he send you letters and cablegrams reporting of the developments? A. I don't think until—I am not—I have to check the exact date. You have the letter there. I think it's in August.

Q. Did he, after the London meeting, did Mr. Galic at various times report to you, not when he reported but did he report to you whatever developments were (415) taking place? A. No.

Mr. Greenspoon: Improper re-cross examination, your Honor. He is now talking about Galic.

The Court: I'll allow it.

A. The answer is no.

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(Luncheon recess.)

Charles Allen, Jr., for Plaintiff, Re-re-direct

Herbert Allen, for Plaintiff, Direct

(416) CHARLES ALLEN resumed.

Mr. Nizer: Your Honor, no further re-cross.

Re-re-direct Examination by Mr. VanVoorhis:

Q. Mr. Allen, you were asked on re-cross whether you wrote to Occidental respecting this venture after July 16, 1964, asking—1965, I beg your pardon—with respect to expenses or disbursements? A. Yes.

Q. I asked you whether you wrote on the same subject to Occidental before July 16, 1965? A. No.

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(418) HERBERT ALLEN, called as a witness by the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Greenspoon:

Q. Mr. Allen, will you do two things, first keep your voice up, and second, speak slowly enough so that we can all understand what you are saying. Will you do that? A. I will try.

Q. Talk as though you want the man in the farthest end of the courtroom to hear you. A. All right, Mr. Greenspoon.

Q. Are you a partner of the plaintiff Allen & Company? A. I am.

Q. A general partner? A. I am.

Q. How long have you been such general partner? A. Since approximately 1928. '27, '28.

Q. As of 1964, did you know a man by the name of Armand Hammer? A. I did.

Q. Approximately when did you meet him? A. 1958, '59.

(419) Q. Did you know as of 1964 the defendant, Occidental Petroleum Company? A. Yes, I did.

Q. How long had you known of that company? A. 1958, '59.

Q. Did you know that coincidentally with your meeting Mr. Hammer for the first time? A. Yes.

Q. Now, as of 1964, did you know Mr. Walter Maguire, father and son? A. Yes.

Q. Is there any initial or something we can identify the difference? A. Walter N. Maguire is the father, Walter L. is the son.

Q. And how long as of 1964 had you known those two gentlemen? A. Approximately 1958, 1959, probably a year or so earlier, I don't know.

Q. And did you know as of 1964 with what company, if any, those two Maguires were associated? A. Associated Oil & Gas Company or Corporation—I don't remember.

Q. Now prior to 1964, had Allen & Company done any (420) financing business with or for Occidental Petroleum Corporation? A. Yes.

Q. Will you tell us what they were? A. We did approximately $3,900,000 worth of rights or convertible debentures, I believe. In addition to that, in order to enable Occidental Petroleum to get started or get on their feet—

Mr. Nizer: I move to strike that out.

A. —they had uncovered a very valuable gas field called Lathrop, which Dr. Hammer described to me as having 750 billion cubic feet of gas and didn't know what to do with it. He came to me for advice and what Mr. Bartlet Pinkham of my office, and myself, we devised an idea for him, that he would go to the utility company in California, and I gave him a letter of—a $40 million credit letter with no outs in it, which he could utilize so that he could obtain a contract which at that time gave

him 26 cents or 26-1/2 cents per mcf for his gas, and established Occidental Petroleum.

Mr. Nizer: I hate to interrupt you.

The Court: What was the question? Read the question again.

(421) Mr. Nizer: I move to strike out the answer, in any event.

The Court: Please let me hear the question won't you?

(Question read.)

The Court: Let's strike that out. Let's get a direct answer to a direct question.

Q. You mentioned you had done a rights or debenture? A. Approximately $39 million. Another item of 40—

Mr. Nizer: Your Honor—

Q. Will you tell us the next or the other financing arrangement that you had or done for Occidental prior to 1964?

Mr. Nizer: I respectfully object on the ground it is irrelevant, incompetent, not going to the issues in this case, it isn't background that that is any materiality.

The Court: It may be competent. We will take it on the same basis we have taken other matters of this type.

A. I gave Mr. Hammer a letter of $40 million of (422) Allen & Company credit without any withdrawals of any kind. We could not cancel this anyway.

Q. Prior to 1964 had Allen & Company had any financing business or arrangements with Associated Oil & Gas?

Mr. Nizer: Objected to as irrelevant and immaterial.

The Court: What has that do with it?

Mr. Greenspoon: This witness is going to testify about how this transaction was first brought about by him to Occidental and it involved Associated at that time.

The Court: It is tangentially admitted. If we take it I think we will move it forward quickly. But really both sides I think get in questions and areas that have such little relationship on their face to the issues in this case.

We will take it and discount it properly in terms of lack of relevance.

A. I believe we did. I don't recall.

Q. Now, did there come a time, Mr. Allen, in 1964 when you had a conversation with your brother about Galic and Libya? Just yes or no. (423) A. Yes.

The Court: Galic, and who was the other one?

Mr. Greenspoon: Galic and Libya.

A. Yes.

Q. Can you tell us approximately when that conversation took place? A. It was February, March, April—it may have been as late as May of 1964.

Q. Now, after that conversation with your brother, did you do anything? A. Yes.

Q. What is the first thing that you can remember doing? A. I called Dr. Armand Hammer of Occidental Petroleum.

Q. Now, just one second. Prior to this time had you ever spoken on the telephone with Mr. Hammer? A. Yes.

Q. Had you ever spoken to him face to face? A. Yes.

Q. So did you know his voice? A. Yes.

Q. All right, now tell us about the conversation which you had with Dr. Hammer and first tell us approximately (424) when it was, was it at the same time as your con-

versation with your brother? A. It was within an hour after I talked to my brother.

Q. Now, tell us what the conversation was that you had with Dr. Hammer? A. I told Dr. Hammer that my brother Charles had advised me that he had a telephone call from a Mr. Galic, a friend of his, in Paris, who in turn had advised him that he was in touch with some people in Libya who stated that they could obtain two very valuable concessions in Libya and would he be interested. Armand Hammer stated that he was definitely interested and how could he proceed in the matter. I said "Armand, I am also going to invite into this deal your good friend Walter N. Maguire or Walter L. Maguire of Associated Oil & Gas Company and Allen & Company will be in on the deal, it will be one-third for Allen & Company, one-third for Associated Oil & Gas and one-third for Occidental Petroleum. Armand Hammer said to me, "What do I do now?"

I said, "Well, wait, I am going to call—I will give you this man's name," and I said, "His name is Ferdinand Galic." I said, "Please hold the wire until I call the operator and get his number for you, but don't (425) call him immediately as I have to call him and tell him who you are."

I then called Paris—

Q. No, wait a minute. Wait a minute. A. Excuse me.

Q. Just one conversation at a time.

> Mr. Nizer: May I understand that these conversations preceding the arrangements—are being taken by your Honor subject to the same understanding that you are taking it subject to strike that it is irrelevant and immaterial? The basic agreement which is in writing in this case and violative of the parol evidence rule wherever it attempts to touch these agreements by oral conversations.

The Court: No, I am receiving this. At this point I see no basis for striking it at all.

Q. You left us dangling. You said you wanted him to wait while you got a telephone number? A. That's correct.

Q. Did you? A. I got the number from my switchboard and gave it to Dr. Hammer and asked him to please wait for me until I called Paris. To tell Mr. Galic who was going to call him.

(426) Q. Now, was there anything else said in this conversation that you had with Mr. Hammer?

Mr. Nizer: Objected to as leading.

The Court: Overruled.

A. Not at that moment.

Q. Do you recall anything else? A. Not at that moment.

Q. Let me ask you this question. Did Dr. Hammer object to your calling Maguire of Associated? A. Not at all.

Q. After you hung up from talking to Dr. Hammer, who, if any one, did you call next? A. I called Mr. Galic in Paris. I put in an immediate call for him and reached him some minutes later and advised him that I had talked to Dr. Armand Hammer of Occidental Petroleum and advised Dr. Hammer that Mr. Galic had represented that he had some friends of his in Libya who could deliver two valuable concessions and would he be interested and that I was also—I also advised Dr. Hammer that I had invited Associated Oil and Gas Company in on the same deal together with Allen & Company and I explained to Dr. Hammer—to Ferdinand Galic that I explained to Dr. Hammer that it would be on a one-third Allen, one-third (427) Occidental, one-third Associated Oil and Gas. Mr. Galic said to me, well, is Occidental Petroleum financially able to go into this deal. It will amount to hundreds of millions of dollars.

Mr. Nizer: I object to this.

The Court: I am going to sustain this objection.

Mr. Greenspoon: Your Honor—

The Court: You are certainly getting into hearsay quite removed again.

Mr. Greenspoon: Your Honor, after all, the witness told Dr. Hammer that he was going to call Galic and—

The Court: I understand that.

Mr. Greenspoon: This is just a follow-up of what he told Dr. Hammer he was going to do. I thing this will be connected up.

Mr. Nizer: I don't see how hearsay can be connected—

The Court: Let's take it under my general rule that I will disregard irrelevant evidence, incompetent evidence, and evidence that is immaterial.

A. Mr. Galic then asked me if Dr.—Occidental Petroleum was substantial enough to go into a deal (428) amounting to hundreds of millions of dollars and I said that they did not have the proper finances at that moment, but that Allen & Company would see to it that they had the money and not to worry about it. He said to me, all right, now Herbert, but what about me, are you protecting me as a finder in this matter. I said Ferdinand, I don't know about that, I should have taken that into consideration and I will discuss that with Dr. Hammer.

Q. After your conversation with Galic, did you call Dr. Hammer again? A. I called Dr. Hammer back immediately after getting off the telephone with Ferdinand Galic and I explained to Dr. Hammer, I said I just spoke to Ferdinand Galic and I confirmed everything that Charles Allen had told me. He stated that

there were two valuable concessions that he believed that could be obtained through some friends of his in Libya, that although applications will have to be filed—I neglected to say this before, that while applications will have to be filed, nevertheless, he had the proper connections who could obtain these contracts for us. And I repeated to Dr. Hammer, I also told Ferdinand Galic it would be one-third Associated Oil and Gas, one-third Occidental Petroleum and one-third Allen & Company and that I was going to call our good and (429) mutual friend Walter Maguire and invite him in on the same basis and if he did not come along, would he care to go on a 50-50 basis with us and he said very definitely.

"Q. Who is "he"? A. Armand Hammer said very definitely. I said, by the way, there is one other item I neglected to mention to you and that is that Ferdinand Galic is the finder in this deal and wants to be protected. He said fine. I said now remember, Armand, this will be one-third profit, one-third losses and one-third expenses. He said fine, I will call Ferdinand Galic.

Q. Did you call Maguire? A. I immediately called Walter N. Maguire.

Q. Did you reach him? A. I did not.

Q. Did you call— A. I called Walter L. Maguire, who was president of Associated Oil and Gas.

I might point out that Walter N. Maguire was the chairman. That was the father.

Q. Did you reach the son? A. I reached the son.

Q. Now, thereafter, did you have any further conversation within the next day or two or three with (430) Dr. Hammer concerning whether or not he reached Galic and vice versa? A. I called Dr. Hammer within an hour after I spoke to Walter Maguire. I think within a few moments, and asked him whether or not he had contacted Ferdinand Galic, and he said that he had. I said, are you satisfied with what you heard? He said yes. I said, fine, Armand, and that was the end of the conversation.

Q. Now, over the summer did you have any—summer of 1964, did you have any further conversations with Galic, just yes or no? A. Yes.

Q. Did you have over the summer of 1964, did you have any further conversations with Mr. Hammer? A. Yes.

Q. And just tell us generally, did they relate to this matter? A. Dr. Hammer said that he was proceeding in the matter. Armand—I mean Ferdinand Galic said he was working in the matter and he told me in July that he was setting up a meeting for some or one of Dr. Armand Hammer's associates with the people in Libya.

Mr. Nizer: Excuse me. He is now reciting a conversation he had with Galic and I object to that (431) on the same ground I did before.

The Court: It will be received on the same basis.

Mr. Greenspoon: At this point I offer in evidence P25 for identification and P26 for identification, both of which the authenticity has been conceded. A letter from Brenner to Ogbi and from Ogbi to Brenner.

Mr. Nizer: Your Honor, while these precede the written arrangements made with Ogbi and DeRovin and Galic and consequently, are irrelevant and immaterial and cannot afford the written agreements which have been made, so far as these particular two letters are concerned, they are purely almost social and if your Honor wants to take them subject to a motion to strike, I suppose that would be the practice on these, but it is not anything that is very material.

Mr. Greenspoon: You will concede, will you not, Mr. Nizer, that Mr. Brenner was Occidental's man in Paris?

Mr. Nizer: Yes—no, he was not Occidental. He was Interore, which is a subsidiary and he had some authority in this matter. I was not—in any event, that is not the question before us now.

The Court: All right, they may be received.

(Exhibits P25 and P26 received in evidence.)

(432) Q. Now, Mr. Allen, I show you P27 in evidence and I ask you if you saw that letter at or about the date it bears. A. Yes.

Q. And I show you P28 in evidence and I ask you if you saw that letter and the enclosures at or about the date of the cover letter. A. Just the cover letter?

Q. The whole thing, did you see it at that time? A. Yes.

Q. Mr. Allen, in Plaintiff's Exhibit 28, Mr. Galic said, "As I did not"—

Mr. Nizer: That is not in evidence, is it?

Mr. Greenspoon: Yes, it is.

Mr. Nizer: What is the number?

Mr. Greenspoon: 28.

Q. "As I did not protect my interests with Occidental Petroleum and as it was in fact Allen & Company I would like you to protect my interest for this Libya deal with Occidental Petroleum," do you see that? A. Yes.

Q. Did you telephone to Mr. Hammer in connection with that matter? A. Yes, I did.

(433) Q. Approximately when? A. Within a day. The same day or within a day.

Q. Can you tell us what was—did you get him, by the way? A. Yes.

Q. Will you tell us to the best of your recollection what was said in that conversation? A. I told him that I had advised him earlier, a few months earlier that Ferdinand Galic was the finder in the deal and I had

received a letter from him, he wanted to make certain that he was the finder in the deal. So Dr. Hammer said, I so recognize.

Q. Anything else said in that conversation? A. May I see the letter again?

Q. Which one do you want to see? A. The last one. Yes, I told him about the—I told him about part of Galic's letter, that's all. Nothing more than that.

Q. I show you what has previously been marked Plaintiff's Exhibit 31 for identification and I asked you if you received that letter from Armand Hammer. A. Yes.

Mr. Greenspoon: I offer Plaintiff's Exhibit 31 (434) for identification in evidence. I think the authenticity is conceded.

Mr. Nizer: Your Honor, while this is a reply to a letter of September 1, 1964, which is not in evidence—in any event I don't think could be admitted, and in addition to that, if it has any relevance or materiality is an attempt to alter the ultimate arrangement which was finally consummated irrespective of what preceded it. I want to preserve my objection it violates parol evidence rule and is an attempt by either oral or prior writing to make some change in what is not ambiguous and clear. While the content of the letter in itself is not in any way adverse to any of our theories here, that is not the point. I would like to preserve my right with respect to not—this extensive attempt to create a background for oral or written, between other parties particularly, modification of the written agreement. If your Honor will look at it, you will see.

The Court: Where is the letter of September 1st that is referred to here? Shouldn't they both go in?

Mr. Greenspoon: I am prepared to offer them both, your Honor.

There is an original letter and a corrected letter, your Honor. They have been previously marked P29 (435) and P30 and I would offer them both.

Mr. Nizer: That, of course, is even more extraordinary. There is a letter and then it's headed September 1, 1964, corrected copy. In any event, none of these are admissible, your Honor, to the issues in this case, whether a contract that was valid was ever entered into in the writing of Exhibit A.

The Court: Now what's the problem?

Mr. Greenspoon: I don't know whether Mr. Nizer is objecting or not.

Mr. Nizer: I did not hear that, sorry.

I am objecting.

Mr. Greenspoon: The correction was with reference to Klehe. There was a mistake in one of the paragraphs. The corrected letter deleted the reference with respect to Klehe and Company.

Mr. Nizer: That throws a further cloud on its admissibility, but my objection which I wish to preserve specifically is that the letters are inadmissible, either of them, for the grounds I have stated, your Honor.

The Court: What is the purpose of this?

Mr. Greenspoon: The purpose of the September 1st letter?

The Court: The September 5th letter. What's (436) its purpose?

Mr. Greenspoon: The September 1st letter?

The Court: No, the September 5th letter.

Mr. Greenspoon: If I could see it for a moment—this is all part of the negotiations which led up to the making of the oral arrangement with respect to the first concessions in London in September, 1964.

The Court: If you say it's all part of the negotiations, wouldn't that really require me to exclude them once you came to an understanding?

Mr. Greenspoon: No, your Honor, because there is no integrated writing here in any sense of the word. We have an oral arrangement, partially memorialized and partially referring to an oral arrangement in a document.

The Court: Which is the first project that is referred to?

Mr. Greenspoon: Sir?

The Court: This talks "We are particularly interested in going into a joint venture with you for a second project." Which is the first?

Mr. Greenspoon: Which letter are you referring to, your Honor? September—

The Court: September 1st has a reference.

(437) Mr Greenspoon: I do not recall that. Let me just see that.

I think, your Honor, that that is quoted from a letter from Ogbi Bros. to Occidental. In other words, Mr. Allen was merely quoting a letter—

The Court: I understand that. I am asking you, though—

Mr. Greenspoon: You are asking me—I think what Mr. Ogbi is talking about is fertilizer at that point but I am not positive. The two projects above that outline—one was oil concessions and one was fertilizer. In the first paragraph of the Ogbi letter. And there is references, your Honor, already in evidence relating to the trip to Libya made by Brenner and General DeRovin where they met Ogbi. That, I believe, is Plaintiff's Exhibit 29—or 28, rather.

The Court: Well, are you claiming your agreement goes beyond the memorandum of December 17, 1964?

Mr. Greenspoon: Yes, your Honor. Indeed we are. What we are saying is this:—

The Court: I hope you will clarify it for me.

Mr. Greenspoon: We are saying this: the December 17th letter refers to a prior agreement. Presumably it may be deemed to be incorporated by reference—

(438) The Court: Which is the prior agreement you are referring to?

Mr. Greenspoon: We haven't gotten to that yet. That was made in London in September.

The Court: Are you talking now of the September 18th agreement?

Mr. Greenspoon: It was actually made September 16th or 17th, yes, your Honor.

The Court: Between whom?

Mr. Greenspoon: Occidental and Allen & Company. That is not yet in evidence.

The Court: All right.

Mr. Greespoon: That's what I am leading up to this thing gradually. I have no desire to put in the September 1st letter. All I want is the September 5th letter.

The Court: All right, it may be received on the same basis as the others, that is, Plaintiff's Exhibit 31.

(Plaintiff's Exhibit 31 received in evidence.)

Q. Mr. Allen, did you see this letter, Plaintiff's Exhibit 32 in evidence, at or about the date it bears? A. Yes, I did.

Q. I show you Plaintiff's Exhibit 33 for (439) identification and I ask you if you sent that letter to Armand Hammer. A. Yes, I did.

Mr. Greenspoon: I offer in evidence Plaintiff's Exhibit 33 for identification.

Mr. Nizer: Your Honor, I have the same objection to this. It violates the parole evidence rule.

The Court: The contract is both written and oral, as I understand it, is that correct?

Mr. Greenspoon: Yes, your Honor.

Mr. Nizer: We deny it.

The Court: I understand.

You are making some objections that are very difficult to follow at times.

Received.

(Plaintiff's Exhibit 33 received in evidence.)

Mr. Nizer: This is subject to the same—

The Court: Yes. Of course, up to this point, according to these letters, even on your theory of being both an oral and written contract, there is no agreement yet.

Mr. Greenspoon: Not yet.

The Court: I am simply allowing this on an introductory basis because the letters make it perfectly (439a) clear there is no agreement.

Mr. Greenspoon: Not to this point.

The Court: Get down to the point, please.

(440) Q. I just want to ask one question as to this letter here, September 8. Did you enclose a copy of Plaintiff's Exhibit 32 with your letter dated September 8, 1964, to Dr. Hammer? A. Yes, I did.

Q. All right, now, in connection with Plaintiff's Exhibit 32, did you telephone to Dr. Hammer? A. I telephoned Dr. Hammer—

Q. Just yes, sir, first. A. Yes.

Q. What was that conversation?

Mr. Nizer: Objection, sir.

The Court: Overruled.

A. I told Dr. Hammer that I understood that he was having a meeting in London with Ferdinand Galic, General DeRovin and/or other associates of Ferdinand Galic

and that I wanted to be there and I wanted Walter Maguire to be there and his answer was, "I want you there, too."

Q. Now, did you after that, go to London? A. I left, I believe, on the night of September 14 on the night flight to London, yes. I arrived at Claridge's London on approximately September 15, the morning, I believe.

(441) Q. The year? A. 1964.

Q. All right. Now, while you were in London did you meet with Mr. Hammer, just yes or no? A. Yes.

Q. Did you meet with Walter Maguire? A. Yes.

Q. Did you meet with Galic? A. Yes.

Q. Did you meet with Walter Maguire and Galic together? A. Yes.

Q. Did you meet them before, that is, Walter Maguire and Galic, before you met with Mr. Hammer? A. Yes.

Q. All right. Now, did you have a conversation with Galic and Maguire, just yes or no? A. Yes.

Q. I take it Dr. Hammer was not present? A. No.

Q. All right. Now, after you had that conversation with Maguire, did you meet with Mr. Hammer? A. Yes.

(442) Q. Now, where did you meet him first, and who was present when you first met him, if you remember? A. I met Dr. Hammer on the night of the 16th, I believe, in the cocktail lounge or in the lobby of Claridge's Hotel.

Q. Who was present when you met him? A. He was with a man whom I believe he introduced me to, I believe he introduced me to him as General DeRovin.

Q. Was there anyone else present besides you, Hammer and DeRovin? A. That's the only one that—Ferdinand Galic.

Q. All right. On that occasion, did you have a discussion with Mr. Hammer? A. I called Dr. Hammer—

Q. Just yes or no first. A. Yes.

Q. All right, tell us what happened, what was said and what you did. A. I asked—

Mr. Nizer: Continuing objection to this as preceding the contract and not binding on the parties.

A. I called Dr. Hammer to one side and I said, "Armand, I want to let you know that Walter Maguire of (443) Associated Oil & Gas decided to step out of the picture and that *re* my original conversation with you, Armand, you and I would go on a 50-50 basis."

Q. What did he say to you? A. He did not answer me.

Q. Is that all that happened at that conversation? A. We made arrangements to meet the next day but that's all that happened at that conversation.

Q. Now, did you meet with Dr. Hammer the next day? A. Yes, I did.

Q. Now, who was present when the meeting commenced? A. Ferdinand Galic, Armand Hammer and myself.

Q. Will you tell us what if anything Galic said at that meeting—by the way, whose room was this meeting in? A. Either in Dr. Hammer's suite or my suite, I really don't recall.

Q. In what hotel? A. In the Claridge Hotel, September 16, 1964.

Q. You say this was the morning? A. I believe it was in the morning.

Q. All right, and you, Galic and Hammer were present? (444) A. Galic, Hammer and myself were present.

Q. All right. Now, will you tell us what Galic said, forgetting who said helloes and good mornings and that kind of stuff. A. Excuse me, if I said before that we met on the evening of the 16th first, we met on the evening of the 15th first.

Q. All right, it doesn't matter. A. Well, I want to correct that.

Ferdinand Galic explained once I said, "Ferdo, would you be good enough to please explain to Dr. Hammer again this entire deal," and he told him that—

Q. "He" is who? A. Ferdinand Gallic told Dr. Hammer.

Q. In your presence? A. There were three of us in the room. He told Dr. Hammer the entire deal again, that there were two very valuable concessions that he believed could be obtained even though applications had to be filed, but they had, the people with whom he would meet could assist him in obtaining these concessions even though applications had to be filed. He told him that it would run into the hundreds of millions of dollars, but that he had been assured by me that Allen & Company would (445) handle the financing for the Occidental side of it, and that the deal—that was it. That was it.

Q. All right, now, did you and Mr. Hammer have a conversation at this point? A. I then went into another room or one of the other rooms with Dr. Hammer, the other room in the suite, and asked Ferdinand Galic to stay outside.

Q. Will you tell us what was said by you and by Dr. Hammer in this conversation? A. I said, "Armand, as you know, now, Walter Maguire of Associated Oil & Gas is out of this deal, and we are going on a 50-50 basis."

Armand Hammer said, "No, we are not going on a 50-50 basis, we are going on a 75-25 basis."

I said, "Armand, you are not going back on your word with me." I said, "I just finished with you in New York, when I spoke to you in New York, and you agreed on the telephone that if Walter Maguire didn't come along on his third that we would go along on a 50-50 basis and you are backing out of it."

He said, "I am not." He said, "This is the only way that I would go in the deal."

I said, "Well, I am going to be very fair about it. I will call my brother Charles on the telephone, but (446) as far as I am concerned, I will only go with you on a 50-50 basis. I then called Charles—

Q. Wait a minute. Wait a minute. A. Excuse me.

Q. Did you call your brother Charles? A. I then called Charles Allen in New York from Claridge's.

Q. Was Dr. Hammer in the room when you called him? A. No, I was alone with Charles Allen.

The Court: No, not with Charles Allen, you were calling him.

The Witness: I beg your pardon, your Honor. I was alone in the room. I beg your pardon. Thank you.

Q. Now, what did you say and what did Charles Allen say in this conversation?

Mr. Nizer: Objection to that, sir.

The Court: Is this the conversation between the two brothers?

Mr. Greenspoon: Yes.

The Court: Isn't there an end to this kind of hearsay? Please.

Mr. Greenspoon: I can do it the other way.

(447) The Court: There is great liberality I admit, but there is another way. You know, as a competent lawyer, how to handle this if there is any issue in getting it in in the proper way.

You had a conversation with your brother Charles Allen. Did you ever thereafter talk to Dr. Hammer?

Q. Did you have a conversation with your brother Charles Allen? A. I did.

Q. Did you thereafter have a conversation with Dr. Hammer? A. I did.

Q. What did you say? A. I told Dr. Hammer Charles had agreed to go along on a 75-25 basis because he said, Herbert, after all, if Ferdinand says if it is going to be hundreds of millions of dollars profit in the deal, what difference does it make. I told Dr. Hammer, "Armand, as far as I am concerned, I would like to disregard what my brother said, but I love him and I am going to go

along with him, we are partners together, if the deal will be on a 75-25 basis. But he said I will manage the deal. I said all right, Armand, you manage the deal, we will go on—you have (448) 75 per cent of the profits, you have 75 per cent of the losses, and you have 75 per cent of the profits, losses and expenses, and Allen & Company has 25 per cent of the profits, 25 per cent of the losses, and 25 per cent of the expenses, and whenever you present us with a bill, we will settle with you."

And he said, "Fine, Herbert." He repeated again, "but I want to manage this deal."

I said, "All right, Armand," and we shook hands then and there on that deal.

Q. Was there anything else said about expenses? A. As the expenses were presented to us, we would pay them.

Q. Anything else? A. And I told him—yes, very definitely. I told him that under no condition did I want him to bill Allen & Company for any of his other trips in Europe which he told me he was working on. I said, "Don't give me any other bills other than that relating to the Libyan matter. I will pay all expenses relating to the Libyan matter, but don't throw anything else in on me."

Q. What did he say to that? A. He laughed and he said, "Oh, don't worry about that, Herbert."

(449) I said, "Fine, Armand."

Q. By the way, to what was this 75-25 deal supposed to apply? A. To the two Libyan oil concessions.

Q. Now, up to this point, had anyone mentioned specific numbers of concessionaires? A. Two numbers were mentioned, but they are a little vague in my mind. Two numbers were mentioned.

Q. Who mentioned them? A. Ferdinand Galic.

Q. Now, after you shook hands was there anything further said as between you and Mr. Hammer? A. Well, some people started coming in and out of the room.

Q. Were you introduced to them? A. I was introduced, but I don't remember who they were.

Q. Well, can I refresh your recollection, was one of them Theodore Brenner? A. I don't recall.

Q. Did you meet anyone who kind of looked Arabic? A. They did, but I don't recall their names. There (450) was something else said.

Q. All right, tell us what else was said. A. I told Armand Hammer—Armand Hammer told me he was going into a meeting with these people, and I said, "Armand, I want to go in the meeting too."

He said, "It isn't necessary, Herbert. I am the manager of this deal, you can go on and enjoy yourself."

I said, "Armand, if this is set now I will go away for a four or five day rest, I haven't been away in years."

He said, "You go away and you take a rest."

I said, "Now you are going to manage the deal."

He said, "Yes," and we shook hands. I said, "This is a deal then?" He said, "Yes, it is."

Q. Now, Mr. Allen, did you see Plaintiff's Exhibit 66 at or about the date it bears? A. Yes.

Q. And in connection with Exhibit 66, did you write Plaintiff's Exhibit 67 to Armand Hammer? A. Yes.

Q. And did you thereafter receive Plaintiff's Exhibit 69 from Armand Hammer? A. Yes.

(451) Mr. Greenspoon: Mr. Nizer, will you stipulate with me that there is an error in Mr. Hammer's letter, Plaintiff's Exhibit 69, that he means December 9 and not December 8? Do you see that?

Mr. Nizer: I think that is so. I think Dr. Hammer so testified.

I think that is so, whether he testified or not.

Q. At any time between January 1, 1964, and January 31, 1967, did you ever meet Mr. Richard Vaughan? A. I don't ever recall meeting him.

Q. At any time between those two dates did you have any conversation with Mr. Vaughan concerning Libyan concessions? A. No.

Q. Now let's talk about Mr. Brenner. Other than the possibility of having met him in London, in September 1964, did you meet Mr. Brenner at any time between January 1, 1964 and January 31, 1967? A. Not that I recall.

Q. During that period of time did you have any conversation whatsoever with Mr. Brenner concerning Libya? A. No.

(452) Q. Between January 1, 1964, and January 31, 1967, did you ever meet C. James Blom? A. No.

Q. During that same period of time did you have any conversation whatsoever with Mr. C. James Blom concerning Libyan concessions? A. No.

Q. Now, Mr. Allen—by the way, did you ever respond in writing to Plaintiff's Exhibit 69 in evidence? A. No.

Q. Now, did there come a time when you received Plaintiff's Exhibit 71 for identification without the handwritten interlineation thereon? A. Yes.

Q. Now when you received it, did you call Dr. Hammer? A. Yes.

Q. What did you say to Dr. Hammer? A. I told him—

Q. Excuse me. Prior to the receipt of Defendant's Exhibit 71 for identification, did you have a telephone conversation with Dr. Hammer before you got it? A. Yes.

The Court: Defendant's 71 for identification is (453) that?

Mr. Greenspoon: I am sorry, Plaintiff's 71 for identification.

Mr. Nizer: 70 or 71?

Mr. Greenspoon: 71, December 17.

Mr. Nizer: Which is the one before the insertion or after?

Mr. Greenspoon: This one has the insertion in it.

A. Yes.

Q. Who called whom? A. Dr. Hammer called me.

Q. Can you tell us approximately when it was with reference to December 17? A. Some time between December 9 and December 17 he called me.

Q. What did he tell you in that conversation? A. He told me that he had been presented or had been offered another concession and did I want to go along on the same basis as the first basis, that, according to our agreement, handshaken agreement in London on September 16, 1964, that is, that Occidental of the new concession would have 75 per cent of the profits, 75 (454) per cent of the expenses, and 75 per cent of the costs, Allen & Company would have 25 per cent of the expenses, 25 per cent of the costs, and 25 per cent of the profits, and I said that that I did. I would. And he said he would send me a letter.

Q. After that conversation, did you receive Plaintiff's Exhibit 71 for identification without the handwritten insertion? A. Yes.

Mr. Greenspoon: Just for the record to make it clear, Mr. Nizer, shall I offer Plaintiff's Exhibit 70 which does not have it?

Mr. Nizer: Yes, I think that is much clearer.

Mr. Greenspoon: All right, I offer Plaintiff's 70 in evidence I understand without objection.

Mr. Nizer: No objection.

(Plaintiff's Exhibit 70 was received in evidence.)

The Court: All right, received.

Q. Now, Mr. Allen, after you received Plaintiff's Exhibit 71 for identification without the handwritten insertion, did you call Mr. Hammer? A. Yes, I did.

Q. Did you get him? (455) A. Yes, I did.

Q. What did you tell him? A. I told him that the letter of December 17—

Mr. Nizer: Just one second. I object to this as an effort to create oral evidence to contradict or otherwise interfere with the agreement which

is merged in Exhibit 71 under the very handwriting and signatures of the parties, and if this is an attempt to alter or change or modify the words inserted by Mr. Herbert Allen, which were mutually agreed upon, then I say this oral conversation is inadmissible.

The Court: I don't know what his answer is going to be.

Mr. Nizer: It is obvious.

The Court: It isn't to me.

Mr. Greenspoon: He knows what it was from the deposition I assume. But your Honor, this parole evidence rule has absolutely no application to this case.

The Court: I am not so sure you are right about that with all I am taking on this. I like your positiveness of position. I think the difference is that probably the lawyers are always so certain that they are absolutely right and the Court is somewhat doubtful.

(456) Mr. Greenspoon: Your Honor, I think we will be able to convince you before we are done today the parole evidence rule is inapplicable.

The Court: When you say you know from the witness' prior answer, is there an attempt to change the matter that was inserted in this?

Mr. Greenspoon: No, your Honor.

The Court: I didn't think there was.

Mr. Greenspoon: To explain it.

The Court: I don't need any explanation for it, it speaks for itself. I will take it anyway. Let's go ahead, I think you lawyers are really involving this case beyond requirements and complicating it unnecessarily.

Mr. Greenspoon: All right, sir.

The Court: Somebody suggested this was a very complicated case this morning, and said it was an

involved case. From your pleadings and everything else I have read, while you have written numerous and extensive briefs, I think I have gotten about 16 today, I think there are three comparatively simple issues in the case. I say that with due respect to the eminent lawyers in the case.

Q. Mr. Allen, I think his Honor—

The Court: Go ahead, I will take his answer.

(457) Q. I think his Honor has permitted you to tell us the conversation you had with Dr. Hammer concerning Plaintiff's Exhibit 71 for identification before the handwritten material was inserted therein. A. I told Dr. Hammer that the letter that he had written to me of December 17 did not conform to our letter of December 9, which was part of our original agreement which we had shaken hands on in London on September 16.

Q. What did he say? Did you tell him anything else? A. He said, "Well, all right, what should we do about it," and I said, "Well, I don't know, Armand, why don't we both think about it, what wording to put in," and I honestly don't know, as I sit here, whether or not I said to be mutually agreed upon or whether that was his suggestion. As I sit here I sincerely do not as I so testified before, I think he said it, but I would not swear to it.

Q. By the way, when you mentioned your letter of December 9, are you referring to Plaintiff's Exhibit 67 in evidence? A. Yes. All I wanted to get—

Q. What part were you referring to? (458) A. All I was referring to was that I want only the expenses to be charged to the Libyan venture and nothing else, and that's the only thing I stressed when I was in London.

Mr. Nizer: Just a moment. If you are going to quote from it, quote from it. The very thing you just quoted doesn't say that. It says 25 per cent of the expenses whenever they are presented and

will mutually with your good self approve or disapprove. It doesn't say what you said.

The Court: Why don't you defer that for cross examination?

Mr. Nizer: All right, your Honor.

Q. Let me ask you this question: In this telephone conversation, did you read to Dr. Hammer that paragraph? A. I read my last paragraph to Dr. Hammer.

Mr. Nizer: I object to that as leading.

The Court: It certainly is leading.

A. All right, I discussed with Dr. Hammer the last paragraph and told him that that is where the letter wasn't the same and that is how the words happened to be written in here. I wanted to make certain only one thing, that the expenses—

Mr. Nizer: I move to strike out the rest of (459) the answer.

The Court: Now, Mr. Witness, you can only tell what you stated to Dr. Hammer in a talk with him.

The Witness: All right, I thank you, Judge.

Mr. Greenspoon: At this time I offer in evidence Plaintiff's Exhibit 71 for identification and Plaintiff's Exhibit 72 for identification.

Mr. Nizer: No objection.

Mr. Greenspoon: And while we are at it, how about Plaintiff's Exhibit 73 for identification?

Mr. Nizer: Yes, no objection to that.

(Plaintiff's Exhibit P71, P72 and P73 for identification were received in evidence.)

Mr. Greenspoon: Are they admitted?

The Court: Yes.

Mr. Greenspoon: May I have those to ask the witness one thing.

Q. Can you tell us what was enclosed with Plaintiff's Exhibit 72 in evidence by number? A. Yes.

Q. Which one? A. This.

Q. I know, but by number. A. By number, P71.

(460) Q. And did you receive P71 back from Mr. Hammer under P72? A. Yes.

Q. Now, Mr. Allen, at any time from September 18, 1964, to January 31, 1967, did anyone from Occidental send to you copies of Plaintiff's Exhibits 36, 37 and 38? A. I never saw 36.

Q. Did they send them to you during that period of time is my question? A. No, not on 36. Not on 37. Not on 37. No, on P38.

Mr. Greenspoon: I offer in evidence Plaintiff's Exhibit 52 for identification and I don't think there is any doubt about its authenticity. That is the agreement with Lawler.

Mr. Nizer: Your Honor, I object to this as being preceding Exhibits 70 and 71, which is the written arrangement between the parties and therefore irrelevant. It is some other geologist that was engaged and furthermore I am checking the record right now. There was a question about the documents in the Lawler file and Judge Lasker took the entire file, and on our objection authorized only several documents to be taken out of that file and (461) presented. I am checking it now, but I believe that this letter was excluded by Judge Lasker in his ruling.

Yes, that is right.

Mr. Greenspoon: To the contrary, Judge Lasker ruled that parts of that contract were to be delivered to us.

Mr. Nizer: Where is that, Mr. Greenspoon? I have the order here and if that is correct—

Mr. Greenspoon: I think that is all right.

It doesn't matter anyway, your Honor. I think the question is whether it is relevant here.

Mr. Nizer: Yes, I think—I have a letter here pursuant to Judge Lasker's ruling after study of the entire file in which the letters that he permitted parts or all to be submitted were given, and this is not included.

Now, I want to be fair to counsel and say that I recognize that your Honor has the full discretion to rule otherwise despite that preliminary order, but I think that the reasons that maintained that position then are just as sound now.

So I object on the general grounds just called to your Honor's attention in the prior ruling. It is a decision in the form of two opinions which I would like (462) to hand up to your Honor. Counsel is reading them.

The Court: I haven't seen them at all.

Mr. Greenspoon: I don't think they have anything to do with this, your Honor. In the first place, I believe, my recollection is that—I have—could I have the date of that document again, the one I just offered?

The Clerk: October 16, 1964.

Mr. Nizer: Your Honor can see how far afield this is. In our effort as early as October '64, to obtain some geological assistance, some arrangements were made. What has that got to do with this issue?

Mr. Greenspoon: It has got plenty to do with it, your Honor, because it makes Lawler their agent for certain purposes, it makes certain of his letters admissible in evidence, and it is another fact not disclosed to the plaintiff.

The Court: How does this letter make Lawler their agent?

Mr. Greenspoon: It is a contract, an employment agreement, your Honor.

The Court: How does it make him their agent? They engaged the man for geological purposes. Does that (463) make Lawler an agent?

Mr. Greenspoon: It does insofar as letters are written back and forth between two of them. When they write Lawler a letter and Lawler answers.

The Court: I can't accept that a letter agreement between an employer and employee for an employee's services makes the employee the employer's agent with respect to matters beyond the scope of the employee's relationship. That is what you are saying here.

Mr. Greenspoon: I am not talking about that, your Honor. I am saying there are some Lawler letters which are going to be highly relevant to the issues in this case and are really going—and I just want to get in his contractual relationship first that it was concealed from us. That is another point.

Mr. Nizer: Concealed?

Mr. Greenspoon: Yes, it wasn't disclosed. Put it that way?

The Court: Let me go back to another exhibit that we received in evidence and I am referring to the exhibit dated December 17, 1964, which had the insertion following the conversations which the witness testified, that is, the conversation between him and Dr. Armand Hammer. What exhibit number is that, 71?

(464) Mr. Greenspoon: 71 in evidence, your Honor.

I think your Honor might mean 69, where he refers to Mr. Theodore Brenner and our geologist.

The Court: No, no, I know the one I mean. The one that has the handwritten insertion.

Mr. Greenspoon: That is 71.

The Court: You asked for it before. I gave it back to you.

Mr. Greenspoon: Here it is, your Honor (handing)

The Court: I think the witness will need this.

Mr. VanVoorhis: Your Honor, might I add just a word there, that is, that one of the issues is whether Galic turned up the concessions and it is quite material, it seems to me, to show that Occidental's consulting geologist did not refer or recommend these particular parcels. Galic, we contend, did. I think this is another basis on which this is highly pertinent unless Mr. Nizer will waive a point in the defense—

Mr. Nizer: No, there is no sequitor even if it is a fact and it isn't a fact as the evidence will later show on the depositions which have already been conceded in.

Mr. Lawler was an independent contractor geologist as these companies hire them as early as (465) '63, long before any of this occurred, your Honor. And this matter has been reviewed and fully argued previously and while it is not binding on your Honor in any sense, I feel that the cogency of the arguments, the briefs and the rulings, two rulings, if your Honor has them, of Judge Lasker which excluded this very document upon the same arguments except that they were more extensive, ought to appeal to your Honor since this is totally irrelevant, and a further attempt by going back to other channels of other people we hired and what not, to confuse the issue of a simple agreement between the parties where expenses and costs had to be mutually agreed or there were none that could be charged, and that is the issue here on this subject, and trying to lift themselves by their bootstraps, your Honor, by referring to other geologists that

we had as far back as '63, we had some in '61, is certainly far, far afield under any theory of this case, and I don't wonder that Judge Lasker ruled it out.

The Court: What makes you think that the Court is likely to be confused simply because there are a great many exhibits coming into the case, many of which upon their face are irrelevant as far as the issues in this case are concerned in the light of my repeated statement that since I am sitting without a jury, I would take almost (466) anything that is offered and eventually decide the simple issues of the case if they eventually remain as simple as I think they are upon matters that are clearly evidentiary?

Mr. VanVoorhis: I think that the defense has not abandoned its position that Lawler and other geologists connected with the defendant had an important point in turning up these concessions rather than Galic and I think that is quite material.

The Court: That I don't know, I haven't heard any evidence on it, but I was about to ask the witness a question, if I may.

Mr. Greenspoon: Yes, your Honor.

By the Court:

Q. Referring to the letter of December 17, I am calling your attention to the portion: "We agree to the same arrangements with you on the possible second concessions as on the first concessions." A. Yes, Judge. Yes, your Honor.

Q. What was your understanding there of the first concessions? A. The first concessions, that Occidental Petroleum would have 75 per cent of the profits, 75 per cent of the (467) losses, 75 per cent of the expenses, Allen & Company would have 25 per cent of the profits, 25 per cent of the losses, and 25 per cent of the expenses.

Q. Well, I am afraid I didn't make myself clear on the question. You were describing what you understand to be the arrangement. I ask you what was your understanding as to the reference to the first concessions? This letter refers to two concessions. A. The first concession became two, if I recall.

Q. Pardon? A. The first concession I think was split up into two. I believe there were two numbers mentioned in London at my first meeting. They mentioned two concessions to me.

Q. That is what I am coming to. The first concessions, those to which you referred, when you related a conversation that you had with Dr. Armand Hammer— A. Yes.

Q. —on I believe September 17, either in your suite or his suite at the Claridge Hotel? A. Yes.

Q. And you said at that time according to your testimony you came to an arrangement. A. Yes.

Q. Or an agreement. (468) A. Yes, your Honor.

Q. Under which Occidental was to have 75 per cent —that related 75 per cent of the expenses, the losses and the profits? A. That's correct.

Q. And you were to participate to the extent of 25 percent— A. That's right.

Q. —of the expenses, losses and profits? A. That's correct.

Q. You were relating then, as I understood your testimony, to a different concession than is referred to in this letter as far as the second concession is concerned? A. That is correct, your Honor.

Q. And if I understood your testimony, you said at that time you did come to an agreement with Dr. Hammer with respect to those first concessions? A. On December 17?

Q. No, on September 17. A. On September 17—on September 16, that is correct, your Honor.

Q. Those were different concessions entirely from the second concession referred to in this letter? (469) A. That is correct, your Honor.

Q. Then you had two separate agreements with him with Occidental according to your testimony, did you not? A. Without the legal interpretation, yes.

Q. No, I am asking you as a layman, based on your testimony. A. Well, I agreed to the same—

Q. Well, what you are saying is with respect to this second concession, and if this isn't correct say so— A. Yes.

Q. —that you came to the same understanding or the same agreement, whatever term you want to use— A. You are correct.

Q. —that you had with Occidental insofar as the first concession? A. You are correct, your Honor.

Q. There are two separate contracts then? A. You are correct, your Honor.

Q. The one that you entered into on September 17, 1964, and the second one which you claim existed by virtue of this letter which he sent to you with the handwritten insertion by yourself and the acceptance by him, do I understand correctly? (469a) A. You are correct, your Honor.

The Court: Suppose we take our mid-afternoon recess.

(Recess.)

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(470) Mr. Greenspoon: Has your Honor ruled on the Lawler contract yet?

Mr. Nizer: Before your Honor does, I would like to make just one point I didn't, and that is certainly through this witness the Lawler contract cannot be submitted. He knows nothing about it, I don't think he will claim he saw it, and if they are to offer this in evidence, they have to have some foundation through someone who knows about it.

Mr. Greenspoon: The authenticity is conceded, I think?

Mr. Nizer: I concede the authenticity of the document, but I don't concede it being offered in evidence through this witness, aside from all the other objections I have made.

You listed Lawler as a witness. He is going to be here—

Mr. Greenspoon: He won't be here, as far as I know. I don't control him. I think he is in Alabama, or some place.

All my points with this witness is, is that he wasn't told about it. That is what I am really driving at and, on top of that, the Lawler relationship with Occidental I think is a highly relevant one in view of a (471) lot of communications that passed back and forth between them.

Mr. Nizer: Your Honor, perhaps I can facilitate this. If the only question is, "Were you told about"—

The Court: I was going to say, if that is what your offering is for, why don't you ask the witness if he was ever told, and we can end it at that point?

Mr. Greenspoon: All right. May I have that, your Honor, and I will ask him if he has ever received a copy of it.

The Court: He has already testified, I believe, that he didn't. I may be mistaken.

By Mr. Greenspoon:

Q. Mr. Allen, at any time from October 18th, I believe it is, 1964, through January 31, 1967, did Occidental or anyone in Occidental deliver to you a copy of Plaintiff's Exhibit 52 for identification? A. No.

Q. Did anyone in Occidental tell you about that document? A. No.

Mr. Greenspoon: I offer in evidence the February 20, 1965, agreement, which I think Judge Lasker did direct you to deliver to us.

(472) Mr. Nizer: We delivered it to you, but the same objection. If you want to ask whether he got a copy, subject to my general objection, that may facilitate it. The documents are not thereby made admissible.

What number is that?

Mr. Greenspoon: 83.

The Court: Why don't you put the same question to him and I think we can save time, if that is your purpose.

Mr. Greenspoon: Fine, your Honor.

By Mr. Greenspoon:

Q. Mr. Allen, at any time from February 20, 1965, through January 31, 1967, did anyone from Occidental deliver a copy of Plaintiff's Exhibit 83 for identification to you? A. No.

Q. Or to Allen & Company? A. No.

Q. Did anyone from Occidental ever tell you about Plaintiff's Exhibit 83 for identification at any time from February 20, 1965, through January 31, 1967? A. No.

Mr. Greenspoon: I offer in evidence Plaintiff's Exhibit 78 for identification. Your Honor, before anything is said, I will explain exactly why I am offering this. (473) There has been much ado made about enclosures that are supposed to be in letters that are not there from Galic. This is one we got from Occidental in which they note right on it that whatever he said was enclosed was not enclosed. So it happens with Galic quite a bit. That is the only point of that letter.

The Court: That is your observation, that it happens quite a bit, and I am sure Mr. Nizer ob-

jects to your statement and the objection is sustained.

Mr. Greenspoon: It happened at least twice, put it that way.

The Court: That it happened once or twice is not quite a bit. I think you should bear in mind my previous observation that speeches and statements by lawyers is not evidence.

Mr. Greenspoon: I am sorry, your Honor.

The Court: I take it you are referring to the handwritten material "enclosure not included"?

Mr. Greenspoon: Yes, sir. We got that from Occidental.

The Court: Received for that limited purpose.

(Plaintiff's Exhibit P78 received in evidence.)

(Pause)

Mr. Nizer: Your Honor, before that is accepted—

* * *

(476) Mr. Greenspoon: I offer in evidence Plaintiff's Exhibit 204 for identification and I think although it is undated, I think Mr. Nizer will concede that it was completed in its present form in or about November of 1964.

Mr. Nizer: I will tell you in a moment. I don't know the facts. I don't know what it is.

(Pause)

Mr. Nizer: Is that the Xerox we gave you of 258?

Mr. Greenspoon: Yes.

Mr. Nizer: Yes, I do concede the date, November, 1964.

Mr. Greenspoon: And I think there is no (476a) objection to the document, is that right?

Mr. Nizer: What is this?

Mr. Greenspoon: The Vaughan report.

Mr. Nizer: No objection.

(Plaintiff's Exhibit P204 received in evidence.)

(477) Mr. Greenspoon: That is quite a lengthy one, your Honor, and—

The Court: What is the date of it?

Mr. Greenspoon: It is conceded, your Honor, to have been completed by Mr. Vaughan in November, 1964. Is that right, Mr. Nizer?

Mr. Nizer: Yes.

The Court: A point of inquiry with respect to this exhibit.

Paragraph 7, the third line or beginning the second line:

"Libya will, of course, be influenced by OPEC decisions * * *"

Does that refer to Occidental Petroleum—

Mr. Greenspoon: No, your Honor. That is the oil producing countries of which Libya was not then, I believe, a member. It became a member since then. It is the big nine countries.

The Court: All right, go ahead.

Q. Mr. Allen, I show you Plaintiff's Exhibit 80 in evidence and I ask you if anyone from Occidental at any time between February 15, 1965, and January 31, 1967, ever delivered a copy of it to you or told you about it. A. No.

(478) Mr. Nizer: I object to it but I understand your Honor is taking it subject to the rule your Honor has laid down.

The Court: This is a very poor copy, Plaintiff's 80. I cannot read the second page at all.

Mr. Greenspoon: Do you have a better copy of that? Ours is very bad. Ours is very poor. We can Xerox it and deliver to the court a better copy.

Your Honor, may I have the Vaughan report. I want to ask a few questions about it.

Q. Mr. Allen, at any time from November, 1964, through January 31, 1967, did anyone from Occidental deliver a copy of Plaintiff's Exhibit 204 to you? Or to Allen & Company to your knowledge? A. No.

Q. Now, Mr. Allen, during any time from September, 1964—well, now let's bring it back, from January 1, 1964, to January 31, 1967, did anyone from Occidental tell you that the cost of discovering oil reserves in Libya has been among the lowest in the world, being in the order of 10 cents per barrel compared to over a dollar fifty cents per barrel in the United States? A. No.

Q. Why don't you read the—

(479) The Court: Can't you put it one simple question. Was any of the information contained in the Vaughan report brought to his attention, period.

Q. Just read the summary sheet which runs 12 paragraphs.

Mr. Nizer: He has already said he didn't get the Vaughan report.

Mr. Greenspoon: He might have been informed orally about some of the stuff in there.

Mr. Nizer: You asked him if he was informed orally about its contents. He said he didn't get it. I object to this particular question, your Honor.

The Court: Overruled.

The Witness: May I have the question, please?

Q. Did anyone from Occidental at any time from January of 1964 through January 31, 1967, tell you about the matter contained in items 1 through 12 of the summary sheet of Plaintiff's Exhibit 204? A. No.

Mr. Greenspoon: Your Honor, we don't have an extra Xerox at the moment. Can we Xerox this—

The Court: I indicated that whatever exhibits were offered in evidence I would require for my

own use, (480) copies rather than the originals. I prefer to have copies at all times to work with.

Q. Now, Mr. Allen, just briefly did you send Plaintiff's Exhibit 97 to Mr. Hammer? A. Yes, I did.

Q. After—

Mr. Nizer: Will you wait one second?

Mr. Greenspoon: The DeRovin report, Mr. Nizer.

Q. After you sent Plaintiff's Exhibit 97 to Mr. Hammer, did he at any time call you on the telephone to discuss Plaintiff's Exhibit 97? A. No.

Q. Was the first time that Allen & Company had any response to Plaintiff's Exhibit 97 the letter dated July 16, 1965, Plaintiff's Exhibit 124 in evidence? A. Yes.

Q. Now, sir, in the second paragraph he says "Our agreement of September 18, 1964, with Ogbi Bros. was cancelled on June 19, 1965," do you see that? A. Yes.

Q. And then it goes on to say "When I met Mr. Taher Ogbi in London together with Mr. Galic," do you see that? A. Yes.

(481) Q. Before you received Plaintiff's Exhibit 124, had you been told about that meeting on June 19, 1965? A. No.

Mr. Nizer: By whom?

Q. By Hammer. A. No.

Q. By anybody from Occidental? A. No.

Q. Or by Galic for that matter? A. No.

Q. Or by Ogbi? A. No.

Q. By the way, have you ever talked to Ogbi except the possible time when you were in London in 1964? A. No.

Mr. Greenspoon: I offer in evidence the alleged cancellation of Ogbi referred to in Plaintiff's Exhibit 124 which is P122 for identification.

Mr. Nizer: This letter has been stipulated by pre-trial order, your Honor. There is no alleged about it. It's a fact. My only objection to it is that it is collateral and has no bearing on the basic contract here and that all these matters do not go to the issue, but (482) otherwise, we are not challenging that there was a cancellation—

The Court: It may be received.

(Plaintiff's Exhibit 122 received in evidence.)

Mr. Greenspoon: I offer in evidence Plaintiff's Exhibit 123 for identification which I think is conceded authentic and might e[illegible] conceded admissible, Mr. Nizer. It was [illegible]laintiff's Exhibit 9—somebody's exhibit [illegible]ot remember. Pre-trial item 16.

Mr. Nizer: Is that the letter from the Chase Manhattan Bank?

Mr. Greenspoon: It is on the Chase Manhattan Bank's stationery.

Mr. Nizer: That has been stipulated. It was annexed to our submission.

Mr. Greenspoon: No, not that letter.

Mr. Nizer: Oh, this is the first. I thought that was the second.

Mr. Greenspoon: That's what preceded July 16th.

Mr. Nizer: That's right, July 15th, that's what I said.

(Plaintiff's Exhibit 123 received in evidence.)

Q. Mr. Allen, at any time prior to January 31, 1967, did anyone from Occidental talk to you about the subject (483) matter of that letter, Plaintiff's Exhibit 123? A. No.

Q. When you received Plaintiff's Exhibit 124 in evidence, did you discuss it with your brother, Charles Allen and anyone else? A. I commenced a discussion—yes.

Q. With whom? A. With my brother Charles.

Q. With anyone else? A. A little later, a few minutes later, James Deer.

Q. Who is James Deer? A. Connected with Holtzmann, Wise & Shepard, our attorneys.

Q. Do you know whether or not Mr. Hammer was in New York on July 16, 1965? A. I do not.

Q. Will you tell us what the conversations were between you, Charles Allen and James Deer?

Mr. Nizer: Objection sir.

The Court: I don't really know how this can possibly be binding on the defendant in any respect, but I am going to take it. I took it before.

Mr. Greenspoon: You took it from Charles Allen before.

(484) The Court: I don't understand on what theory this conversation on the part of the two general partners of the plaintiff with their attorney with respect to their alleged rights under this contract would have insofar as it would be binding on the defendant, but I'll take it.

You may answer.

A. Of course, we were astonished at the letter—

Q. No, give us the conversations.

The Court: You do not have to move to strike that out.

Mr. Greenspoon: I move to strike it out.

A. I told Charles Allen that I was quite surprised at the letter. That it appeared as though Armand Hammer was being tricky, that he was playing things close to his chest, that it was quite obvious that he was trying to freeze us out. As we were talking—excuse me, I am preceding myself a little bit.

As we were talking it over, my door is always open, I never close the door to my office. Jimmy Deer was

passing along in the corridor and I called him in. I said Jim, look at this letter, would you be kind enough to tell us what to do about it. And he said, may I please see the file. After he read the file—

(485) Q. Excuse me, was the—I don't want to interrupt you, but was the DeRovin report, whatever we call it, Plaintiff's Exhibit 97, in the file? A. Yes, it was.

Q. Now, will you please continue. A. After he read the report, I said to my brother and to Jimmy Deer, it appears that Armand is being tricky, that he is playing things close to his chest. He is trying to freeze us out.

Q. Go ahead. A. I am trying to think now, I want to be correct.

Trying to freeze us out. And isn't this, Jimmy, just like a husband who wants to get rid of his wife, sending his wife a telegram and saying in the telegram we are no longer—I am no longer married and it doesn't mean a darn thing. Jimmy said, that's exactly so. I said, just what should Charles and myself do about it. I said, is there any reason to answer this? He said, it's of no legal consequence and he used some other legal phrase which I don't remember. And we did not answer it.

Q. Now, Mr. Allen, in the month of August, 1965, did Armand Hammer call you on the telephone concerning the July 16th letter, Plaintiff's Exhibit 124? (486) A. August of—

Q Did Armand Hammer call you on the telephone? A. I don't recall. I would say no.

Q. In a conversation in August of 1965, did you tell Armand Hammer that he was fully justified in sending that letter?

> The Court: Without objection by counsel, I must suggest to you on a matter that is rather critical that you do not lead or put leading questions. Whether there is objection or not—

Mr. Greenspoon: I am trying to negate something.

The Court: I must suggest that you not lead the witness and certainly there is a proper way of developing evidence by questions as to which there can be no objection. And I think that's really what ought to happen here. I think you must recognize that this is a matter of some importance in this case, is it not?

Mr. Greenspoon: Yes, sir.

The Court: I am going to suggest that you don't lead.

Q. Mr. Allen, did you and Armand Hammer, just the two of you with no one else present, ever discuss Plaintiff's Exhibit 124 in evidence? A. Up to what period? (487) Q. Well, up to January 31, 1967, just the two of you? A. Never.

The Court: Do I understand your answer to be that following the receipt of a letter of July 16, 1965, which you say you discussed with your brother and as to which you had the advice of Mr. Deer, at no time did you ever discuss the contents of that letter with Dr. Armand Hammer?

Mr. Greenspoon: By himself alone I mean, is my question.

The Court: That was the question I put. It seemed to me it was a perfectly simple question.

The Witness: I never did.

Q. In 1965, as between you and Charles Allen, who was in charge of this Morocco phosphate, copper, whatever you want to call it, talks with Mr. Hammer? A. Charles Allen.

Q. Did you attend the meeting at which your brother was present some time after July 16, 1965? A. With Dr. Hammer?

Q. Yes. A. Some time in November.

Q. And who was present and where did it take place? (488) A. In the office—in Charles Allen's office.

Q. When you said November, do you mean— A. November, 1965. Present were Charles Allen, Dr. Hammer and myself.

Q. Other than to say hello or goodbye, did you participate in that conversation at all?

The Court: I am suggesting, again, you are leading on matters I prefer you don't.

Q. Did you say anything at all? A. I said nothing at that meeting other than hello or goodbye.

Q. Will you tell us what Charles Allen said, if anything, and Dr. Hammer said, if anything, at that meeting? A. That was in November, '65?

Q. Yes, sir. A. Charles Allen told Dr. Hammer that he had received communication from Ferdo Galic and that Galic was quite disturbed. I believe that he was quite disturbed and he said, I will sum it up as much as I can. He told Dr. Hammer that Ferdo is complaining that you don't answer his phone calls. For God's sakes, will you cooperate with him. I told Ferdo that we have our 25 per cent interest. You have an interest in this deal, Ferdo. (489) Please cooperate with Dr. Hammer. Charles Allen was telling this to Dr. Hammer in my presence. Then they went on to discuss phosphates.

Q. Did Dr. Hammer say anything about it? A. Not to my knowledge, at that moment. Before he left, he did.

Q. What did he say before he left? A. He thanked Charles very much for what he was doing with Ferdinand, and that was the conversation, that I remember.

Q. Incidentally, did you see Plaintiff's Exhibit 141 at or about the date it bears, or whenever you received it? A. Yes.

Q. Just yes or no: Did you call Galic or did Charles call Galic about Plaintiff's Exhibit 141? A. Charles Allen called Ferdinand Galic on this letter. I remember it clearly.

Q. Mr. Allen, were you present at a meeting which took place in the summer of 1966 with Dr. Hammer and your brother Charles? A. Yes.

Q. Do you know how that meeting was arranged?

The Court: Pardon me. Can you fix the time of (490) that meeting?

Mr. Greenspoon: Yes, I will.

Q. When was that meeting, what month? A. I believe that was August, 1966.

Q. Preceding that meeting, had there been an exchange, to your knowledge, of correspondence between your brother and Dr. Hammer? A. Could I see anything at all to refresh my memory?

Q. I will show it to you. I show you Plaintiff's Exhibit 179 and Plaintiff's Exhibit 180 and I ask you if you saw that correspondence in July, 1966, if you remember. A. I remember seeing the cable.

Q. Which cable? A. The cable which reads, "According your advice, have done utmost for Hammer"—

Q. Just tell us what it is a part of. A. Part of a letter of July 5th, P179. I don't know whether I saw the letter to Armand.

Q. Let me ask you this question: Was the meeting in August or the meeting in the summer of 1966 after the date of Plaintiff's Exhibit 180? A. Yes.

Q. Can you fix it in August? Try to come as close (491) as you can to the date in August when that meeting occurred. A. I would think somewhere in the area of the 12th, somewhere around that area of August 14th, 12th, 15th, in that area.

Q. Do you remember who requested that meeting? A. Dr. Hammer.

Q. Where did the meeting take place? A. Either in Charles Allen's office or in my office.

Q. Who was present? A. Dr. Hammer, Charles Allen and myself.

Q. Who did the talking—well, let's do it this way; what was said at that meeting by Dr. Hammer by you, by Charles or by any of you? Give us the full conversation. A. I remember the meeting very well because Dr. Hammer came into the office and he seemed quite disturbed—

Mr. Nizer: I move to strike that.

A. —and I have never forgotten that because I rarely see him disturbed.

Mr. Nizer: I move to strike that out.

The Court: I will disregard it.

Q. Could you describe his conduct or his looks, if you can? (492) A. Well, he appeared quite worried—

Q. No, no. A. I cannot, no. Therefore, I will skip that.

Dr. Hammer came in and he said, "Charlie, this man is threatening me"—he practically disregarded me in the room and that is why I remember it so vividly—"This man is trying to take these concessions away from us and trying to take them elsewhere."

Charlie said, "I am well aware of it, Armand. He invited Allen & Company to have the two concessions and I told him that under no condition could he do that," and that we were all working for the same cause, we had our 25 per cent interest, that he had his interest and he shouldn't even give it a thought.

Armand said to Charles Allen, "Would you please get this man off my back?"

Therefore, Charles said, "What do you want me to do?"

He said, "Will you please get him off my back and see if you can get him to settle with me?"

Charles went on the telephone, called Ferdinand Galic, and how quickly—

Q. Just a moment. Were you in the room when Charlie called Galic? (493) A. I was in the room. I was not on the telephone nor was Armand Hammer on the telephone.

Q. Was Armand in the room? A. We were all three of us in the room.

Q. All right, we have Charlie on the phone. Go ahead. A. Charlie was on the telephone and obviously he was arguing quite a bit with Ferdinand Galic and he told him—they were arguing back and forth and we both heard him say that, "Please desist, Ferdo. We all have the same interest. Allen & Company has a 25 per cent interest, you have your interest. We don't want the concessions, you have no right to be trying to give the concessions elsewhere, and you should not try to take them away from Armand Hammer. Won't you please settle with him?"

After a long, four or five minutes talk, which is quite lengthy for Charles Allen, Charles turned to Armand and myself and said, "You both heard what I said. I told Ferdinand Galic"—I am getting ahead of myself—"Charles Allen said to Ferdinand Gallic at the conclusion, "Ferdo, if you will please settle with Dr. Hammer I will give you anything up to—you can have anything up to 50 per cent of our 25 per cent, provided you settle."

Charles Allen came off the phone and said, "You (494) heard what I said. I told Ferdo Galic I would give him up to 50 per cent of our 25 per cent if he settled with you and he assured me that he would."

Armand Hammer said, "Thank you very much. I will take it on from here," and he left the room.

The Court: You say this took place in August, 1966?

The Witness: Yes, your Honor. That was after the concessions—

The Court: The concessions had already been granted at that time?

The Witness: That is correct.

The Court: And it was long after the award?

The Witness: That is absolutely right. That is why Dr. Hammer was worried and came in and asked us—he told us that Ferdinand threatened to take the concessions away. That is the reason Charles Allen made the call. He said, "Get him off my back."

Q. Mr. Allen, were you advised at some later date that Occidental and Galic had gotten together?

Mr. Nizer: I can't hear you.

Mr. Greenspoon: I asked him if he was advised that Occidental and Galic had gotten together at some later date.

(495) A. I don't understand the question.

Q. Did Dr. Hammer report back to you what he did after he left your office in August, 1966? A. In reference to what?

Q. In reference to Galic. A. I was told at some later date that there had been a settlement made.

Q. Who told you that? A. My brother, at a later date. I don't recall when it was, because I didn't know the settlement was made but I recall my brother did tell it to me. I don't ever recall seeing it.

Q. After you had this meeting with Dr. Hammer in your offices in August of 1966, did you have subsequent discussions with Galic? Just yes or no. A. Oh, yes.

Q. When did they commence, roughly? A. Ferdinand Galic—from that date on, Ferdinand Galic didn't leave Allen & Company alone—

Mr. Nizer: I move to strike that out.

A. I had almost daily calls, either Charles Allen or myself had practically daily calls from Ferdinand Galic after that August 12th, 14th or 15th meeting.

(496) Q. 1966? A. 1966.

Q. As a resut of these calls from Galic, did you do anything about it? A. Yes, I did. He was so bothersome, he said, "Well, are you protecting me"—

Mr. Nizer: I object to this.

Q. What did you do? A. I contacted—

Mr. Nizer: Just a moment. Give me an opportunity, please.

The Witness: I beg your pardon.

The Court: Please listen to the question and answer it.

Q. The question is, what did you do? A. Contacted our attorney, Jimmy Deer.

Q. To do what? A. To check up and see what we should do re our September 16, 1964, contract.

Q. Subsequent to that date that you asked him to check up—

Mr. Nizer: What date is that?

Mr. Greenspoon: October, 1966.

Q. Is that the date? (497) A. Some time in October, middle of October, early October, 1966.

Q. Do you know whether or not Mr. Deer looked at the files? A. We gave him the files.

Q. Subsequent to that date, was this letter signed by you and sent to Occidental (handing)? Just yes or no. A. Yes.

Mr. Greenspoon: For the limited purposes as set forth in the pre-trial order, I offer Plaintiff's Exhibit 194, and I am also offering 195 for the same purposes.

Mr. Nizer: Will you state the limited purpose?

Mr. Greenspoon: The limited purpose, 194, is just to show what we requested of you, and 195 is to show what you responded.

Mr. Nizer: Wait a moment—all right, yes, notice of communications.

(Plaintiff's Exhibits P194 and P195 received in evidence.)

The Court: When do you say you turned the file over to Mr. Deer?

The Witness: That file was turned over to Mr. Deer in early October, 1966.

(498) Q. Can you tell us when for the first time—first, let me ask you this: did anyone suggest to you that that letter should be sent? A. Our attorney, James Deer.

Q. When did he make that suggestion, if you can remember?

Mr. Nizer: I beg your pardon. I am sorry, I can't hear either of you now.

Mr. Greenspoon: My question was, did anyone suggest that the January 31, 1967, letter be sent, and the answer is yes, Jimmy Deer, and now my question is, when did he make that suggestion.

A. A few weeks prior to the date of this letter.

Q. It took you two weeks to get that thing drafted? A. I am waiting four months to get one little thing done, so—

The Court: You don't have to add to the record this colloquy between counsel and his client. That is not part of the record.

Mr. Nizer: I didn't hear the last answer at all, or is it stricken out, your Honor? Then I don't want to hear it.

The Court: There was colloquy between examining counsel and his client and I suggested it was not part of (499) the evidence in this case. If you are interested, you will see it in the record.

Q. Mr. Allen, did Occidental at any time from September 16, 1964, through January 31, 1967, send to you any

invoice for expenses or costs or anything of that nature? A. In relation to the Libyan thing?

Q. Yes, sir. A. No.

(500) Q. Now, prior to 1964 and thereafter, was Allen & Company involved in any drilling joint ventures with Occidental? A. Yes.

Q. Where were they located? A. I believe, in California.

Q. When did they first begin? A. I believe, in 1960, '61.

Q. Have they terminated as yet? A. No.

Q. In connection with those joint ventures, did you ever pay any money? A. Yes.

* * *

Q. Do you know a man by the name of Alfred Gray? (501) A. No.

Q. G-r-a-y? A. I don't recall.

Q. Well, would it help you if I told you he was at one time a vice president of Occidental? A. I don't know. I don't know whether I ever met him. I don't know him.

Q. At any time from January 1, 1964— A. I doubt it, I might add.

Q. At any time from January 1, 1964 through January 31, 1967, did Mr. Gray tell you anything at all about the Libyan matter? A. No.

Mr. Nizer: Objected to as totally irrelevant and immaterial.

The Court: The answer is no.

Q. At any time—

* * *

Q. Now, sir, from any time, January 31, 1964 through (502) January 31, 1967, did Mr. James E. Lawler tell you anything at all about this Libyan matter? A. No.

Mr. Nizer: Objected to as irrelevant and immaterial whether someone told him about it on the outside.

The Court: I will let the answer stand. Put the next question.

Mr. Greenspoon: I am trying to exclude any information coming to them.

Q. Do you know a Mr. Dunlap? A. No.

* * *

Cross Examination by Mr. Nizer:

Q. You say that you gave a file to Mr. Deer, your attorney, to examine into your rights that you might have about four months before January 31, 1967, when you wrote your claim letter; is that correct? (503) A. No; that's incorrect.

Q. When did you give it to him? A. In the middle of October 1966.

Q. October '66? A. That's right.

Q. What part of October, if you know? A. I think it was around the middle of October.

Q. All right. And then I think you told us that you received his opinion about the matter how many weeks before January 31, 1967, in answer to his Honor's question? A. I think about two or three weeks before. About two weeks, two to three weeks.

Q. And did you authorize your attorney to send the letter, a claim letter, before January 31, 1967? A. I told him that I thought he should get a letter—

Q. Just answer my question. Did you or did you not? A. May I have the question, please?

Q. I will repeat it. It will be faster.

Did you or did you not authorize your attorney, when he gave you the opinion, to send that letter that later was sent on January 31, 1967? A. Yes.

Q. And is it simply a coincidence that he waited until January 31, 1967, the very day that there were public announcements (504) in the press of a large oil find in Libya? Is that date a coincidence?

Mr. VanVoorhis: I object to the form of the question.

The Court: I will allow it.

A. It appears to be a coincidence.

Q. It was on January 31, 1967 that you read in the newspapers that an extraordinary or a large gusher of oil had been found in Libya; is that right? A. That's correct.

Q. And you say that even though you had instructed your attorney to go ahead about two weeks before that, that letter "We are examining our file" was simply a coincidence on the date of January 31st, when you read about the gusher; right? A. That's correct.

The Court: I would like to ask you one question, to make sure that I do recall your testimony.

You have testified several times that you turned this file over early in October 1966.

The Witness: That's right. 1966.

The Court: Didn't you also testify that following the receipt of the letter of July 16, 1965, when you were in the room with your brother and had the letter of July (505) 16, 1965 in front of you, Mr. Deer passed by the door, the open door of your room; you called him in, and on that occasion you gave him the file?

The Witness: We did. He returned it to us.

The Court: He had the file on two separate occasions?

The Witness: He read the file in our office and returned it the same day.

Q. And on that occasion that his Honor has just put the question about, he gave you an answer on the same day, according to your testimony, not to go ahead, to

ignore that letter that had been sent to you of July 16th? He gave you an immediate opinion that day, didn't he? A. That is correct.

Q. Then he took two or three months, from October to the two weeks before January, to give you another opinion involving a claim against Occidental; correct? A. That is correct.

Q. Now, who dictated the letter of January 31, 1967, P-194? A. May I see it again, please?

Q. Yes, Mr. Allen. (506) A. It will refresh my memory.

Mr. Nizer: Show it to him, please.

Mr. Greenspoon: Sure.

A. (Continuing) I just want to read the wording.

The Court: Pardon me. While the witness is reading the letter: I will hear the other matter at the end of this case today, in about five minutes.

The Witness: Would you ask me the question again, please, Mr. Nizer?

Q. Did you prepare the letter of January 31, 1967, P-194, or did your lawyer do so? A. I prepared the letter, and I believe that Mr. Deer may have refined it. I believe I prepared this letter, and he refined it.

* * *

(507) Q. When you wrote and your attorney made some changes—You wrote, "Dear Armand: We have been reviewing our agreement with Occidental Petroleum". Did you mean to convey by that that by sheer accident you happened to be going over your agreement with Occidental and you wanted to know more about it?

Mr. VanVoorhis: May I repeat my objection? It is argumentative, and it is improper in form, improper cross-examination.

The Court: Overruled.

A. Will you give me the question again?

Q. I thought you had just given the answer.

The Court: Will the court reporter read the question, and the witness will answer it.

A. It was just a coincidence.

Q. You mean it was a coincidence that you happened to be going over your file or agreement at the time of January 31st? Is that what you meant by coincidence? A. I did not say that, Mr. Nizer. We instructed our attorney to go over this in October and about three weeks prior.

Q. I heard that.

(508) The Court: Let him finish.

A. In January, three weeks prior to this letter, that we got hold of Mr. Deer again and tried to get him to finalize a letter to Occidental Petroleum, three weeks prior to this letter.

Q. And it took him three weeks to help prepare this letter for you? A. Sometimes it takes him longer.

Q. And did you finally prepare your own letter, subject to some revisions by him? A. Yes; I did.

Q. Why didn't you three weeks before prepare this letter, then, and submit it to him? A. I got tired of waiting. I got tired of waiting for him. I still would not sent it out without a lawyer.

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(510) New York, New York.
Septemer 10, 1973—10:00 A.M.
Room 36

(Trial resumed.)

The Court: All right, please proceed.

HERBERT ALLEN resumed the stand and testified further as follows:

Cross Examination (continued) by Mr. Nizer:

Q. At the time that you wrote to Dr. Hammer on September 1, 1964, which is P29 for identification, were you aware of the fact that the Libyan projects would involve hundreds of millions of dollars? A. I was. My answer should be I was so informed.

Q. In his letter, Dr. Hammer, which is P70, states, "We agreed to the same arrangement with you on the possible second concession as on the first concessions."

You see that, do you not, sir? A. Not very well. I don't have anything in front (511) of me.

Q. Well, do you recall that language? A. Yes, I do.

Q. And as your Honor asked you yesterday with respect to those two concessions that are referred to, that is the second and the first concessions. Were you aware of the explanation that you made to his Honor yesterday at the time that you testified on your deposition or did you learn those facts subsequently? A. I am sorry, I don't follow you.

Q. At all times during your deposition in this case did you have the same explanation that you made to his Honor concerning those depositions—those two phrases, the second and first concessions? A. I always had knowledge of them.

Q. At your deposition, you were asked at Page 138, "What was the cost to be mutually agreed upon as you understood it in your conversation with Dr. Hammer?"

You said, "Whatever costs were incurred in relation to Libya."

Do you recall making that answer to that question? A. Yes.

Q. Pardon? A. Yes.

(512) Q. Page 140: "What costs were to be mutually agreed upon," and your answer, "Any costs relating to the Libyan matter."

Did you make that answer? A. Yes.

Q. And were those answers correct when you made them? A. Yes.

Q. Before making the ink changing in the December 17, 1964 letter, did you discuss that change with your attorney? A. I don't recall.

Q. Was it Mr. Deer who suggested to you that you put in this ink change in order to protect yourself against the possibility of hundreds of millions of dollars of liability? A. I don't recall, but my answer would be—

Mr. VanVoorhis: Objection to that—to the form of the question, not proper cross-examination.

The Court: Overruled.

A. I don't remember that, but my answer would be probably no.

Q. Who was the attorney with whom you advised at that time concerning this letter? (513) A. No attorney.

Q. Did you not discuss the letter of December 17 with any lawyer? A. No.

Mr. Greenspoon: Excuse me, may I inquire, is he referring at the time or at some later date?

Mr. Nizer: At the time before he made the ink changes.

A. No.

Q. You say that you did this all by yourself without consultation with any attorney, right? A. I believe I did, yes.

Q. Have you ever read the deposition—withdrawn.

Do you know that your attorney, Mr. Deer, gave a deposition in this case? A. I heard that he had.

Q. Did you ever read it? A. No.

Q. Would it refresh your recollection if I told you that he said you took the matter up with him and he advised you to put in that ink change? A. No.

Q. Would you still say that he is incorrect? A. I can't make any statement for Mr. Deer.

(514) Q. Pardon? A. I can't speak for Mr. Deer.

Q. May I read to you and ask you if this refreshes your recollection. I am reading from Page 80 of Mr. Deer's deposition:

"Since Herbert Allen wrote that in I am asking you if that refreshes your recollection whether that was done with some consultation? A. Maybe I got to revise the earlier statement. He might have called and read me this and I probably said, well, it talks about sharing costs. Maybe you better define it so it is to be mutually agreed upon. And he put it in."

And then I read from 82.

Mr. Greenspoon: I think you ought to read the balance of that answer.

Mr. Nizer: I will read it even though I don't think that is a proper interpretation. He continues: "I have kind of a vague recollection of maybe I did. I think it was over the telephone if it was."

Now, on 82—

Mr. Greenspoon: Your Honor, there is some preceding testimony on this subject by Mr. Deer and I think that should be read to the witness too, because it directly relates to this on Page 79.

(515) Mr. Nizer: May I finish mine and then in accordance with his Honor's ruling we will read. At the bottom of 81:

"Q. You say"—this is to Mr. Deer—"You say that you suggest to make it mutual and so on, whatever you testified to. Did you dictate that over the phone or just orally tell him what to put in? A. No, if I had anything to do at all with it it was more or less off the cuff. He called me and read it and I said well, whatever the costs are open, maybe you better say there to be agreed upon, and he said 'good suggestion,' or whatever.

"Q. He said it was a good suggestion but you didn't dictate the exact language of it? A. No.

"Q. Do you want to see it? A. It is not a complete sentence.

"Q. It is an insertion? A. Well—

"Q. Your best recollection is that you didn't dictate the exact language you just made the suggestion? A. Yes.

"Q. And he said that is a good suggestion and put it in? (516) A. Yes."

And then one more passage—on Page 83:

"Q. Is that letter in accord with the suggestion you made to him? A. Yes."

Now, does that refresh your recollection that all that you at least discussed this matter with Mr. Deer or doesn't it? A. Mr. Nizer, you refreshed my memory very clearly. I do remember now that after—now I do definitely remember Dr. Hammer recommended those words. I wrote the words in after, I wrote the words in I do remember now very clearly, I didn't before to be frank with you, because I never read Mr. Deer's testimony, but you refreshed my memory. I did call Mr. Deer after I wrote the words in just to make doubly sure I was all right. I don't believe I ever testified to that before because it wasn't—you just have refreshed everything to me.

Q. By reading this it refreshed your memory now? A. Yes.

Q. That Dr. Hammer dictated those words to you? A. He never dictated those words to me.

Q. Told you about them? A. Yes.

(517) Q. The insertion words? A. We had both agreed. No, he did not. We both agreed on it. We both came to that conclusion.

Q. You testified before that when you sent the original letter without the change of the ink insertion in it, that he called you up after he got—after this letter was received by you?

Mr. Greenspoon: That is objected to. It is exactly contrary to this witness' testimony.

Q. What is the fact as to who called whom after the first letter without the ink insertion? A. When the letter came in without the ink insertion, if I am not correct, I called Dr. Hammer. I am not sure of that, but I believe I called Dr. Hammer. I am not sure of that.

Q. Now, I read the language of P72 of your covering letter of December 24, 1964. You address it to Dr. Hammer and you say, "Dear Armand. I am returning herewith your letter of December 17 in duplicate with just one major change and that is that the cost should be (to be mutually agreed upon) and I have initialed the same. If there is no disagreement in this matter, would you be kind enough to send me an initialed copy for my files. With kindest (517a) personal regards, I am sincerely, Herbert Allen."

Does that refresh your recollection that it was you who put in the change without the suggestion of anyone and so advised him when you say "I am returning it with just one major change," as if you were advising him about it.

Does that refresh your recollection that it was you who did it and not Dr. Hammer with you? A. It refreshes my memory even more that Dr. Hammer and myself composed those words.

(518) Q. Didn't you call Dr. Hammer on the phone to tell him that you wanted to change the letter he had sent to you? A. I beg your pardon, but I called Dr. Hammer on that letter of December 17th—there was one letter of December 17th. I don't know which one you are referring to—I better see the letter.

Q. The one without the ink insertion. When you got that— A. I believe that is the letter that was not in conformity with my letter of December 9th.

Q. I didn't ask you that. A. I am sorry, but that is my answer. It didn't conform with my letter of December 9th.

Q. Just slowly, please— A. You asked me what I did—excuse me. You go ahead.

Mr. Nizer: I move to strike the answer as not responsive, please.

The Court: Strike it out.

A. May I see what we are talking about, please?

Q. Yes, I would like you to see it.

Mr. Nizer: Will you show him the letter without the insertion, please?

Mr. Greenspoon: P70?

(519) Mr. Nizer: Yes.

Mr. Greenspoon: He wants December 9th, also. Is that all right?

Mr. Nizer: Yes.

Mr. Greenspoon: That is P67.

Mr. Nizer: I don't understand counsel giving him other documents—

The Witness: I am requesting December 9th, your Honor, if I may.

Q. My question is, sir, when you received from Dr. Hammer the letter of December 17, 1964, marked P70, and which has no such insertion in ink, did you call Dr. Hammer to tell him that you wanted something changed

in that letter? A. I told him that the letter of December 17th did not conform with my letter of December 9th, and he agreed.

Q. Did you tell him that on the phone after you received the December 17th, 1964, letter, P70? A. I believe I did.

Q. So it was you who called him to tell him you wanted a change made, right, to conform to what you understood, as you claim, the original understanding to be, according to you, right? A. I told him that the letter of December 17th did (520) not confirm with my letter of December 9th as agreed upon mutually on September 16th and 17th, 1964, in London.

* * *

(521) Q. Let me state it again, Mr. Allen, and let's see if we can get an answer to my question.

After you received P70, the letter of December 17, 1964, without the ink insertion later made, was it you who called up Dr. Hammer to suggest that you wanted a change made, for any reason whatsoever? Did you or did you not call him to suggest you wanted a change made, for whatever reason? A. Yes.

Q. Had you discussed the change that you wanted made with your attorney, Mr. Deer— A. No.

Q. —before you called him? A. Not to the best of my knowledge.

Q. You are not sure of that? A. Not to the best of my knowledge.

Q. You mean you have no recollection, one way or the other?

Mr. Greenspoon: That is objected to, your Honor. He said not to his knowledge.

The Court: I will allow the question.

A. Not to the best of my knowledge.

Q. When you say Dr. Hammer agreed with the suggestion that was made, wherever it came from, for this

purpose, you (522) said in a covering letter to him that you were sending back the letter with one major change, and by "major" you intended that to mean important, to say the least, didn't you? Answer yes or not to that, please. A. In my deposition, Mr. Nizer, if I remember—

Q. No, no. Please answer my question. A. I am sorry, I can't answer that question. I said in a manner of speech only—

Q. Hold it, please, sir. Would you be good enough to address yourself to my question and then you can make any other comment? A. All right.

Q. When you wrote "one major change" did you mean by the word "major" an important change? A. In my mind.

Q. Did you or anyone on behalf of Allen & Company ever protest to Occidental that it had omitted your 25 per cent interest in the Libyan concessions in the prospectus?

Mr. Greenspoon: That is objected to on the ground that I don't know whether there is such an omission in the prospectus. I think the witness should see the prospectus and be asked if he ever saw it. How can he protest if he never saw it?

Mr. Nizer: Will you show the witness your (523) prospectus? If you want that done, we will do it.

Q. Perhaps without taking time, Mr. Allen, you can clear this up for us. You know the prospectus doesn't describe a 25 per cent claimed interest by Allen & Company in this Libyan venture, don't you? A. I have never read the prospectus.

Q. And you have never informed yourself even since this suit was instituted as to whether that prospectus had any reference to the 25 per cent claim? A. No.

Q. You don't know to this moment? A. Except what my lawyers told me.

Q. Did your lawyers tell you it wasn't there? A. I don't recall. I truly don't recall. They may have told me, is what I should have said. The lawyers may have told me.

Q. In any event, if counsel will point out to you at any time that it is there, I will stand corrected. For the present, let me represent to you and assume for the next question it is not there.

Did you or anyone on behalf of Allen & Company ever protest to Occidental that it had omitted your 25 per cent interest in the Libyan concessions in the prospectus? (524) A. No.

Q. Did you ever tell Dr. Hammer or anyone in Occidental that it had omitted Allen & Company's 25 per cent interest in the Libyan concessions from the prospectus? A. No.

Q. Did you ever inquire of Dr. Hammer or anyone in Occidental as to why the claimed interest of Allen & Company in the Libyan concessions had been omitted from the prospectus? A. Would you please repeat that, Mr. Nizer?

Q. All right. Did you ever inquire of Dr. Hammer or anyone in Occidental— A. No.

Q. Did you ever request Occidental to change the prospectus so as to set forth Allen & Company's claimed 25 per cent interest in the Libyan concessions? A. No.

Q. Did you believe that the potential bondholders of Occidental were entitled to know in June, 1966, that you were claiming on behalf of the partnership at 25 per cent interest in Occidental Libyan oil concessions? A. No.

Q. Did you believe that the SEC was entitled to know in June, 1966, that Allen & Company was claiming a 25 (525) per cent interest in Occidental Libyan oil concessions described in the prospectus? A. If Occidental didn't put it in, my answer is no.

Q. Did you believe that the customers of Allen & Company, Incorporated, who purchased the Occidental deben-

tures on the basis of the prospectus were entitled to know if it was a fact that Occidental didn't own a hundred per cent of the Libyan oil concessions described in the prospectus? A. That is legal. I don't know the answer.

Q. You don't know the answer to that? A. It's legal.

Q. How many years have you been in the matter of financing and being involved with issues? Over 40 years? A. 35 years.

Q. Pardon? A. 35. In that field, I would say 35 years.

Q. And in the course of that career, how many hundreds of issues have you been involved with? A. Many. Many hundreds.

Q. Would you say there were thousands, perhaps? A. Many hundreds.

Q. And yet you can't answer the question I asked you because you claim it is legal? (526) A. Would you repeat it, please?

Q. I would like to.

Did you believe that the customers of Allen & Company, Incorporated, who purchased the Occidental debentures on the basis of the prospectus were entitled to know, if it was a fact, that Occidental didn't own a hundred per cent of the Libyan concessions fully described in the prospectus? A. I would assume that you are correct in that.

Q. Correct that they were entitled to know that? A. They were entitled to know.

Q. Was any letter, to your knowledge, ever sent to any of the buyers of these debenture bonds, the $62,000,000 debenture issue, divulging the claimed interest of Allen & Company in the Libyan venture? A. By whom?

Q. By you. A. I don't recall any—

Q. By Allen & Company, Incorporated. A. I don't know that answer, but I would assume no.

Q. Did Allen & Company, the partnership, write any letter to any of the buyers of these debenture bonds

divulging the claimed interest of Allen & Company, the partnership? (527) A. I don't know of any, but I assume no.

Q. Did you answer that question when asked of you in the deposition as positively no, that is, no, without any reservation, I mean? A. It is possible. I don't recall.

Q. I show you the prospectus—do you have it before you, sir? Did counsel give it to you? A. No.

Mr. Greenspoon: Any particular page?

Mr. Nizer: I will refer to pages 23 and 24.

Q. This is Exhibit D11. I ask you to look at the second paragraph under the heading "oil and gas exploration". I read the following to you from it:

"Occidental, through its wholly owned subsidiary, Occidental of Libya, Inc., Occilibya, maintains an exploration office in Tripoli, Libya, from which two concessions will be explored. Awarding of the concessions was announced on February 20, 1966, and the concession agreements were executed on March 29, 1966. Concession 102 formerly bid block 42B covers some 610 square miles. Its northern border is less than one mile from the Nefura field just being developed, and its western border is located less than two miles from the RAK B field discovery well. The very important AMAL and GIALO fields like 14 miles to the northwest and (528) 18 miles to the south respectively. Concession 103, formerly Bid Block 44, covers approximately 728 square miles and is located approximately ten miles westerly from Concession 102 at their closest point. The only operating pipeline in Libya with excess capacity serves the AMAL field northerly at both concessions. Total line capacity is 550,000 barrels daily and through throughput by the end of 1966 is expected to be 150,000 barrels daily. Both Libyan concessions were awarded under the Petroleum Law of 1955 and amendments thereto, including the Royal

Decree Law of November, 1965, and it goes on to describe the royalties that will have to be paid on it to the government, posted price, a full description and detail of the application of two and a half per cent of its net profits after taxes to agricultural development, that Occidental offered to the government to conduct a feasibility study for the construction of an ammonia or uria plant to be financed 50-50 by Occilibya and the Libyan government and to investigate the feasibility of utilizing Libya's Occidental process for shipping perishables in a nitrogen atmosphere and, in parethesis, "(see last paragraph under fertilizers and agricultural chemicals.)"

"Occilibya will have 15 years to establish production on the concessions. A seismic survey was (529) commenced in April, 1966, and it is expected several exploratory wells will be started by July, 1966."

I ask you whether in the light of that description to prospective bondholders made in the prospectus, do you still say that the bondholders were, or do you say they were not, entitled to know of the claimed 25 per cent interest at that time that you, the Allen & Company partnership, claimed in any potential of that development? Do you still say that?

Mr. Greenspoon: It is objected to as previously asked and answered.

The Court: Overruled.

A. My answer is still the same, no.

Q. In other words, you don't think there was an obligation to advise the bondholders of Allen & Company's, the partnership, claimed 25 per cent interest despite the description in the prospectus? That is what your no is addressed to? A. With today's SEC, I doubt this would be even be allowed to be included.

Q. I didn't ask you that. You are giving me legal opinion now. A. I have had experience with it now.

Q. Oh, good. My question is, in view of that (530) experience, do you say the bondholders were not entitled to know—I want to know what your answer "No" meant. A. My answer is no, Mr. Nizer.

Q. Would your testimony be the same if you assume for the sake of argument that Allen & Company had a 90 per cent interest instead of your claimed 25 per cent interest and Occidental had a 10 per cent interest? Your answer would still be the same, would it?

Mr. Greenspoon: Objected to.

The Court: Overruled.

A. 90 per cent interest in dry holes would be nothing.

Mr. Nizer: I move to strike out the answer.

Q. My question is, would your answer be the same? A. I am sorry, I can't go on hypothecation.

Mr. VanVoorhis: We submit his answer should stand, your Honor. He said 90 per cent of a dry hole means nothing.

Mr. Nizer: I move to strike that out, your Honor. It is not responsive to what I was talking about.

The Court: We have so many other matters in the case, we will allow it to stand.

Are you saying that from your point of view it was not required to allow prospective purchasers of these securities no or have information that one of the (531) underwriters had a participating interest in the explorations referred to in the concessions?

The Witness: What I am saying, your Honor—Allen & Company did not write this prospectus.

The Court: That wasn't my question.

The Witness: The mere fact that there are two wells, your Honor, doesn't mean they are going to be productive

and I think having, as I say, 90 per cent of a dry hole, I don't believe that they would be allowed to be in the prospectus today. I had an experience in a Philippine operation with 30,000,000 tons of sulphur and I believe we were told to delete it.

The Court: I wasn't asking you about the hypothetical situation of 90 per cent, I was referring to your own contention, that is, Allen & Company's contention, the partnership, that it had a participating interest in the explorations that are referred to in the paragraphs which were read on page 23.

The Witness: Yes, your Honor.

The Court: Now, is it your view that assuming you did have the interest that you contend for, that it was not required on your part, being an underwriter, to advise prospective purchasers of an interest?

The Witness: We would need legal advice, your (532) Honor, for that. I never had any such advice.

> Mr. Greenspoon: I would like to point out that Allen & Company was not the underwriter—
>
> The Court: It is perfectly clear to me, Mr. Greenspoon. I have sat here for four days and I have listened while a witness made the distinction between Allen & Company, Incorporated and Allen & Company, the partnership, the plaintiff in this action. I think it is fair to assume that I recognized the testimony of the witness and also that I have an awareness that the directors of Allen & Company, Incorporated also included the partners who are plaintiffs in this case.

By Mr. Nizer:

Q. Mr. Allen, in answer to his Honor's question, you said you would want to have legal advice. Didn't you have a law firm that specialized for the corporation when the corporation was formed to have issues that specialized in this subject matter? A. Yes.

Q. Didn't you? A. Yes.

Q. Aside from any legal interpretation, I am asking you as an investment banker of long experience, do you think that a purchaser of a debenture bond might reasonably be (533) influenced, one way or another, by knowing that the issuer in this case didn't have a hundred per cent interest in something described as extensively as this, so that if it were successful he would only receive 75 per cent of the profits, or if it was a dry hole, which was another possibility, that someone would share to the extent of 25 per cent the enormous losses? There might be a loss of a hundred million dollars. Don't you think purely as an investment banker and a man experienced in this field that it would be reasonable for a prospective purchaser to have this information in making his judgment?

Mr. VanVoorhis: I object to the form of the question, your Honor. Argumentative.

The Court: Overruled. He is asking for his judgment or opinion as an investment banker and I will allow it.

A. I think I would like to have the question read back, please, or perhaps you can simplify it.

Q. It is rather long and I would like the question read to you.

(Question read)

Mr. VanVoorhis: Your Honor, there are two or three questions combined in that.

The Court: Yes. Break it down.

(534) Q. Do you think it is reasonable as an investment banker for a prospective purchaser to know that if there is a profit from something described in this prospectus on Page 23 that the company whose fund he is buying doesn't own 100 per cent of that profit. Just reply to

the first part. A. Just repeat that. Would you repeat that, please?

(Record read.)

A. My answer is yes.

Q. Do you think it is reasonable therefore to have called attention to the public buying, asked to buy these bonds, that Allen & Company in June 1966 was making a claim, even as an underwriter—its officers and directors in the partnership had a claim of 25 per cent, an alleged claim of 25 per cent. That should have been divulged, shouldn't it? A. No.

Q. No. Now, Occidental intended to use approximately $15 million of the proceeds of this $62 million debenture bond issue for oil and gas development in 1966 and '67, didn't it? A. May I read it, please.

(535)Q. Yes. It is Page 9, Mr. Allen, if that may help you. A. I have it, thank you.

That statement is absolutely untrue. Your statement is absolutely untrue, Mr. Nizer.

Q. I read, you tell me what is untrue about it. Look at the sixth Line on Page 9 "Occidental presently plans to use approximately $15 million of these proceeds for oil and gas development in 1966 and '67." A. Yes, sir, therefore your question to me is absolutely untrue.

Q. Why? A. Because it doesn't say anything about Libya here.

Q. All right. Now turn over to Page 23 where oil and gas development is defined. Do you see that? Oil and gas exploration. Now do you see the word "Libya" in there? A. I do.

Q. Look at the second paragraph. A. Yes.

Q. Occidental through its wholly-owned subsidiaries—A. Yes.

Q. So that if you combine Page 23, which says there (536) will be $15 million spent on oil and gas development with the section on 23, oil and gas exploration, it

is indicated it is to be spent for Libya? A. Absolutely untrue, Mr. Nizer.

Q. What is the correction you wish to make? A. It doesn't say it at all. There is no indication. Terribly sorry. My experience would tell me you are absolutely wrong, your interpretation.

Q. What is your interpretation of page—I will give you an opportunity on this. A. Just that it is going to be spent. It could be spent in California.

Q. Even though the oil and gas exploration section on 23 describes the extensive exploration which is going to be made in Libya and the potential of 150,000 barrels, you say that doesn't apply to Libya at all? A. No, Mr. Nizer, because $15 million wouldn't cover such an extensive exploration.

Q. That's right, we are coming to some more. I am asking about $15 million. A. No. My answer is that your interpretation is incorrect. It does not say it.

Q. Did you know that Occidental intended to make available an additional $24 million or more for various (537) projects in Libya and other countries? A. No.

Q. Well, look at Page 9, right after the sentence, "Occidental presently plans to use approximately $15 million of these proceeds for oil and gas development in 1966 and '67," the next sentence reads, "The balance of the proceeds have not been allocated for any particular purpose but together with cash generated from operations would be available for projects which Occidental has under consideration for the production of basic fertilizer components such as ammonia, phosphate rock, potash and sulfur in the United States, Canada, Morocco, Tunisia, Libya and Saudi Arabia, which could require substantial capital expenditures for new plant and equipment."

So the plans were to be used among other countries, also for Libya, right? A. Not necessarily. It is in here. It doesn't necessarily mean it will be used for Libya.

Q. This is what a prospective bond purchaser is being told that the $62 million was one of its purposes is the one I have just read, isn't that correct? A. I can't give you the interpretation of that.

Q. You don't know what that means? A. I can't give you that interpretation. I don't (538) get that interpretation out of reading this. I may spend a dollar in Libya.

Q. I say that "There is set aside for further use in these countries including Libya—" A. That is correct.

Q. —the potential use of the bond—of the debenture issue moneys that would be raised? A. It says here, Mr. Nizer, "has under consideration."

Q. That is correct. A. That doesn't mean they are going to do it.

Q. No, and I am asking you whether the bond purchaser isn't being told that part of these moneys, the balance— A. It says the bond purchaser is being told that they have under consideration, Mr. Nizer. That is all I can read out of this. I can't interpret it.

Q. Assuming that part of these expenditures involving millions of dollars related to Libyan concessions in which you claim a 25 per cent interest for Allen & Company, the partnership, did you consider this a material relationship between Allen & Company, the partnership, and Occidental?

> Mr. Greenspoon: That is objected to, your Honor. The assumption is incorrect, and I don't know (539) whether he is talking about today or back in 1966.
>
> Mr. Nizer: Back in 1966.
>
> Mr. Greenspoon: When the witness hadn't even seen the prospectus according to his testimony. So I think that it is improper cross.

The Court: At the time of this—of the issuance of the prospectus, which is dated June 17, 1966, who was the chairman of the board of Allen & Company, Inc.?

The Witness: I was, your Honor.

The Court: I will allow the question.

A. I am sorry, Mr. Nizer. Would you repeat the question?

(Question read.)

Mr. VanVoorhis: One thing, your Honor, you have overruled the objection to the form of the question, except that the constant use of that word "did" in the question assumes that he was familiar with this prospectus at the time and the past tense of the word "did," it is submitted is somewhat misleading in the question.

The Court: I am mindful of the witness' testimony of lack of familiarity with the prospectus.

Mr. VanVoorhis: All right.

A. On an assumption basis your answer would be yes. (540) Q. Now, applying this same assumption that millions of dollars of expenditures were to be made to develop the concession, or might be made to develop the concession, would you still say that the potential bondholders were not entitled to know of your claimed interest in Libyan concessions in May or June 1966? A. I would go to my counsel for advice.

Q. Did you consider a 25 per cent interest to Libyan concessions a material relationship with Occidental on the date the formal contracts were executed between Occidental and the Kingdom of Libya on March 29, 1966? A. I don't know the meaning of "material relationship," Mr. Nizer. I have heard lawyers argue it back and forth. I don't know the meaning of it, the legal meaning of it.

Q. Well, isn't a claimed interest between Allen & Company and Occidental a relationship, do you know what that means? A. Yes.

* * *

(541) Q. I will add a date and I did say so I think, did you consider on March 29, 1966, at the time that the contracts were signed between Occidental and the Kingdom of Libya for the concessions, did you consider that your 25 per cent claimed interest was a material relationship at that time with Occidental? A. I would think it might be an obligation on Allen & Company, but not necessarily a profit.

Q. Not necessarily a what? A. A profit.

Q. I didn't ask you whether it was a profit. As a matter of fact, I will come to that question a little later. Answer my present question, did you consider the (542) 25 per cent interest a material relationship with Occidental at that time?

Mr. VanVoorhis: As of that time.

A. No.

Q. What is that? A. No.

Q. You didn't? A. No.

Q. Did you consider it a substantial relationship?

Mr. Greenspoon: That is objected to, your Honor, not involved in this case.

A. No, 25 per cent of nothing is nothing.

Mr. Nizer: I move to strike that out.

Q. My question is did you consider it a substantial relationship at that time when contracts were signed in May and June 1966 to which you claimed a 25 per cent interest, whatever would happen, in March 1966? A. No.

Q. Did you consider the relationship important that you had, that you claimed you had at that time if not substantial or material? A. Yes.

Q. Did you consider such interest valuable, your (543) relationship valuable, at that time? A. In the concession?

Q. Yes, your 25 per cent— A. No.

Q. —relationship with Occidental. A. No. No.

Q. Did you consider such interest of 25 per cent of no consequence whatsoever? A. I can't answer that.

Q. Pardon? A. I can't—I don't know how to answer that.

Q. What is your best answer? A. I don't know how to answer that.

Q. Is it not a fact that as the head of Allen & Company, Inc. you participated in various phases of setting up the $62 million debenture issue? A. Two phases only.

Q. What were they? A. One was with Dr. Hammer, I guess there were three phases—four phases—one was with Dr. Hammer, one was a discussion with Reynolds & Company, partners, about our 25 per cent interest, another was the discussion with Lehman Bros. about our 25 per cent interest, plus objecting to their heading the deal, and that is all—and I assisted (544) possibly in the pricing. I had nothing else to do with this. It is not my—

Q. Now as to the pricing—skip over that—what did you do with respect to the pricing arrangements? A. I believe, and my memory is a little vague on this, but I do believe there was quite an argument over the conversion price with that lead underwriter and Armand Hammer, that is Lehman Bros. and Armand Hammer and I assisted Armand Hammer in getting Lehman Bros. to come pretty close to the figure he wanted.

Q. So you played a part in setting up the conversion and pricing of this bond issue, is that right? A. I was asked—there was an argument.

Q. Please listen to my question. A. I was asked—

Q. Will you hold it a second, please, sir. A. Yes.

Q. We will get through much faster. A. Yes.

Q. My simple question is, you participated in the setting up of the conversion and pricing of these bonds, no matter what preceded it, what argument? A. I assisted.

Q. You assisted? (545) A. Right.

Q. Did you give the following answer to the following question on your deposition at Page 213:

"Q. Did you have any conversation with anyone in the other underwriting firm, Reynolds & Company, in which you stated that Allen & Company had a 25 per cent interest? A. I don't recall.

Q. You mean you don't know one way or the other? A. I don't recall."

The Witness: Would you read on there, please?

Q. No, please answer my question whether you made those answers at the time to those questions? A. If they are in there I made those answers.

Q. When Dr. Hammer brought the $62 million debenture to Allen & Company, did he speak to you or first to Charles, if you know? A. I think you have your facts incorrect, Mr. Nizer. He did not bring this to our—

Q. I will ask you the question. I am not asking you to comment. A. He never brought them to Allen & Company.

Q. To whom was the first information concerning the fact that Allen & Company would be involved communicated (546) to you, or to your brother? A. Neither of us. It was Allen & Company, Inc.

Q. What is that? A. It was Allen & Company, Inc.

Q. Who is Allen & Company, he doesn't talk to a corporation. Who in Allen & Company, Inc. did he talk to, that is my question. A. Probably me.

Q. Did you make the following answer to the following question, Page 215:

"Q. Was there ever any discussion with Robert Lehman or anyone in his firm with you as to the divulging of your claimed 25 per cent interest in the Libyan deal? A. I don't recall."

Did you make that answer to that question? A. If it is in there, I did, but I am sure there is more to it. I believe there is more to it.

Q. After the announcement on January 31, 1967, that an important oil find had been made in Libya by Occidental, was there heavy trading in Occidental stocks and bonds? A. I wouldn't know.

Q. You wouldn't know that? A. No, sir.

(547) Q. You were one of the underwriters of three underwriters of this issue. Did you approach your list of customers for the purchase of these bonds, the people you had dealt with?

Mr. Greenspoon: I don't understand. I object to the form of the question as incomprehensible.

A. I don't understand your question.

Q. Did you participate personally or through your representatives in the contact with various possible purchasers through various brokerage houses or otherwise as to these debentures? A. I don't understand the question.

Q. Did you ever make a public announcement by press release, interview or other wise, that Occidental didn't own 100 per cent of the profits but that Allen & Company claimed a 25 per cent interest therein after the January 31, '67 announcement of a find of oil? A. Did we make a public announcement? No.

Q. I read from the pretrial order, Paragraph 27:

"On June 17, 1966, defendant made a public offering of convertible subordinated debentures in the amount of $61,186,300 to various underwriters including Lehman Bros., Allen & Company, Inc. and Reynolds & Company, the lead underwriter was Lehman Bros., each underwriter (548) named above agreed to purchase 10 per cent of the unsubscribed debentures of said offering. The debentures which Allen & Company agreed to purchase were

sold by it immediately upon the registration statement becoming effective."

I also read Paragraph 34 of the pretrial order.

Mr. Greenspoon: I object to the relevancy of that item, your Honor.

Mr. Nizer: 34, you mean?

Mr. Greenspoon: Yes.

The Court: I will take it. I will take it on the issue of credibility.

Mr. Nizer: "Allen & Company, Inc. did not advise its customers of plaintiff's claimed interest in the said Libyan oil concessions either prior or subsequent to the purchase by said customers of said debentures."

Q. Is it not a fact that you personally contacted potential customers for the bonds involved in this $62 million issue? A. It is not a fact. To the best of my knowledge it is not a fact.

Q. Did you personally contact any funds such as the Manhattan Fund to buy these bonds? A. No.

Q. Did your brother Charles, to your knowledge? (549) A. I wouldn't know.

Q. Does it come back to you as you sit there that you personally did talk to people that you knew, companies or individuals, to buy these bonds? A. I don't recall.

Q. You just don't recall? A. I don't recall doing that. I may have, but I don't recall it. I don't recall it.

Q. In view of the fact that millions of dollars were required in exploring and drilling for oil in Libya, did you consider 25 per cent interest in such potential obligations a material relationship?

Mr. Greenspoon: As of when?

Mr. Nizer: With Occidental as of June 1966.

A. In view of potential?

Q. A possible obligation of your claimed 25 per cent interest to share losses that you claim, did you consider that a material relationship with Occidental, to share the costs of these explorations? A. If we were billed we would have paid.

Mr. Nizer: Move to strike that out.

The Court: Strike it out. It is not responsive.

Q. Please reply to my question. Yes or no, if you can. (550) A. Well, I really can't. It is so legal, I can't.

Q. Is that legal? A. Well, I would go to my lawyer with a question like that. I don't know how to answer that. I am sorry.

Q. You need a lawyer to tell you whether a 25 per cent obligation under an alleged contract with Occidental to pay the exploration costs— A. No, no, sorry, I do not. Would you repeat your question. I will answer you.

Q. All right, thank you, sir.

Would you please repeat the question? A. I will try to answer.

(Question read.)

Mr. Greenspoon: As of when?

Mr. Nizer: As of June 1966.

A. No.

Mr. VanVoorhis: Again we call attention—

A. No.

Q. You didn't? A. No.

Q. You testified here that you were told originally when you had a talk with Mr. Galic that this matter could run into hundreds of millions of dollars, do you recall that phrase you used? (551) A. That's correct.

Q. Pardon? A. Absolutely correct.

Q. And if Occidental spent hundreds of millions of dollars in the exploration and assume as you have been

constantly assuming in answer to some questions that it was a dry hole, under your contract as you claim it, Allen & Company would be responsible, if it got a bill, for 25 per cent? A. That's correct.

Q. As you have put it, I am taking your version. A. That's correct.

Q. And did you consider that obligation of 25 per cent to share in the cost which might run into hundreds of millions of dollars a material relationship between you and Occidental?

Mr. Greenspoon: As of when?

Mr. Nizer: Oh, now, please.

The Court: As of June 1966. It has been perfectly evident and I think the witness understands that.

A. Our obligation, possibly.

Q. What is that? A. Possibly.

Q. Just possibly? (552) A. I think the answer would be no. There was nothing at the time, so the answer would be no. I have been billed nothing for nothing, so I wouldn't have anything.

Q. That isn't responsive to my question. A. It is the only way I can—I am a layman. That is the only way I can interpret it. I had no bills. I didn't—

Mr. Nizer: I move to strike all that out, your Honor, as not responsive.

A. All right. No, would be my answer.

Q. You want to say no to that question? A. I presume no.

Q. You presume it? A. Yes.

Q. Once the concessions were awarded to Occidental you knew, did you not, that millions of dollars would be spent for seismograph, drillings and other procedures to explore those concessions by Occidental, you knew that, didn't you? A. I haven't been so informed.

Q. You mean that you didn't know from your experience previously that you described to his Honor, your large deals in oil, that it would take millions of dollars (553) to explore, to find out whether there was oil or not? A. I was aware of that.

Q. And if there were millions of dollars spent, and assume that there was a dry hole, as you know there had occurred in Libya in other matters, didn't you? A. I learned that much later.

Q. I see. Well, all right. But assuming that they were not productive and these millions of dollars were lost, are you telling this Court that you didn't consider your alleged 25 per cent obligation to pay a material relationship with Occidental? A. We would have paid it and I would have considered it material.

Q. That is not my question. A. And I would have considered it material.

Q. Is your answer yes to my question? A. Yes.

Q. Did you ever advise your comptroller, treasurer, bookkeeper or accounting department of your claimed 25 per cent interest in the Libyan concessions? A. I don't recall.

Q. Don't you know that at a deposition your brother replied that that was—that the answer to that (554) was no, that no such information or request had been made of your accountants or bookkeeping department? Don't you know that that was never done, Mr. Allen? Is your best answer I don't recall or can you say no to that? A. I don't recall.

The Court: You don't recall what now?

The Witness: I don't recall whether or not—whether or not—will you please repeat the question and I will answer it properly.

Q. Did you ever advise your comptroller, treasurer— A. I don't recall advising my treasurer, either way.

Q. Did anyone to your knowledge in your partnership advise your financial department, bookkeeper, accountants, comptroller, of your claimed 25 per cent interest? A. I don't know.

The Court: I think we will take our midmorning recess at this time.

(Recess.)

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(555) Q. What was the net worth of Allen & Company, Incorporated, in June, 1966? A. I don't know, Mr. Nizer. I thought that was supplied to you. I don't have it in my head.

Q. Have you an approximate figure that you could later check? A. No, I do not.

Q. Do you know whether it was 15,000,000 or 20,000,000? A. I truthfully do not know.

Q. No idea at all? A. I thought we had supplied you with that.

Q. No. A. If counsel has it, I would appreciate his giving it to you.

Q. Did you ever advise your controller or treasurer that large sums might be necessary to meet alleged obligations of supplying 25 per cent of the costs for the exploration of the Libyan concessions? A. No.

Q. Is the auditing firm of Katz, Zuckerman & Company the regular auditors of the partnership, Allen & Company, for the years 1964 through 1967? A. I believe so.

(556) Q. Are they also the regular auditors for the corporation, Allen & Company, Inc.? A. I believe so.

Q. Did you ever advise your auditors, Katz, Zuckerman & Company, of the alleged fact, according to you, that Allen & Company, the partnership, might be obligated

to advance millions of dollars for oil exploration in Libya? A. No.

Q. Did Katz, Zuckerman & Company ever prepare any financial statements for Allen & Company, the partnership, for the years 1964 through 1966? A. Yes.

Mr. Nizer: I ask counsel to show the witness two statements prepared by Katz, Zuckerman & Company on behalf of Allen & Company for the years ending July 31, 1965, and July 31, 1966. They are D17 and D18.

(Documents handed to the witness.)

Q. I call your attention to the subheading, "contingent items," set forth at the bottom of the statement of net worth. A. Yes.

Q. I ask you whether that statement correctly reflects all the contingent obligations of the partnership as of that date? (557) A. Yes.

Q. And those contingent items, it is obvious, is it not, do not include any item regarding the Libyan concession or obligation with respect to it, contingent obligation, does it? A. If there were no bills—

Q. No, please answer my question. Don't answer the inference from it. A. Repeat it, please.

Q. Those contingent items obviously don't include any claimed contingent obligation with respect to the alleged claim of 25 per cent interest, does it? A. No.

Q. I look at D18, for the year ending July 31, 1966, and look at the contingent items there, please. A. Yes.

Q. Do those contingent items correctly reflect the contingent obligations of the partnership as of that date? A. Yes.

Q. And they do not include, do they, any contingent item for your alleged 25 per cent interest in the Occidental matter? A. No.

Herbert Allen, for Plaintiff, Cross

(558) Mr. Nizer: I offer in evidence Exhibits D17 and D18, your Honor.

Mr. Greenspoon: No objection.

(Defendant's Exhibit D17 and D18 received in evidence.)

Q. I ask you to please look at D43, a letter from Allen & Company addressed to Occidental Petroleum, to Mr. Hebner of that company, and D44—the first letter is dated August 2, 1966, and D44 is August 12, 1966, sent by Occidental Petroleum Corporation to the auditors, Katz, Zuckerman & Company, with a copy to Allen & Company.

Do you have those before you, sir? A. I have the one of August 2, 1966, one sheet—

Q. That's right. A. Yes.

Q. And then you have August 12, 1966, in front of you? A. Yes.

Q. On the D43, which is August 2, 1966, your company writes to Occidental, "In connection with the regular audit of our books as of July 31, 1966, will you kindly confirm directly to our auditors, Messrs. Katz, Zuckerman & Company, 50 Broadway, New York, New York, the balance as of that date of our investments with you in the following (559) programs," and there are three listed—well, let me withdraw the last, there are two specifically listed, "1 spring 1962 joint venture; 2 midsummer 1961 joint venture; 3 any other program in which we have a participation," and then there is a final sentence by you, "Also please advise them as to the present status of these joint ventures."

Now, first, I ask you whether any of the first two are the Lathrop matter you talked about before, ventures with Occidental in California? A. My guess is no. I have never read them, I only pay them.

In any event, there were some oil ventures between Occidental and Allen & Company—I don't know whether we were fortunate enough to be in the Lathrop.

Q. All right, you don't know. Is August 12, 1966, a letter from Occidental signed by its controller, CN Bailey, controller of the oil and gas division—do you recognize that as a response to D43, your letter of August 2nd? A. I wouldn't know. One of them is signed by Allen & Company and the response is to Katz, Zuckerman.

Q. Didn't you say on August 2nd, "Will you kindly confirm directly to our auditors, Katz, Zuckerman & Company"? A. I didn't say anything, Mr. Nizer.

(560) Q. Your company, Allen & Company? A. I don't know who wrote this letter. I may have seen it before—

Q. What is the signature immediately above Allen & Company? A. I don't know whose it is.

Q. You don't know who signed that? A. No. It is not Charles or myself.

Q. In any event, you don't deny this is an authorized document sent by the partnership to Occidental, do you? A. No.

Q. Since it requested a direct statement to your auditors, the letter of August 12th is directly addressed to Messrs. Katz, Zuckerman & Company, with a copy to Allen & Company. Do you see that? A. I don't know. Is it under here?

Q. Yes, at the bottom. A. Yes, I do see it.

Q. With the attachment? A. Supposedly, yes.

Q. And the heading of August 12, 1966, D44, says, "Allen & Company's participation in Occidental Petroleum drilling programs." Do you see that? (561) A. Yes.

Mr. Nizer: I offer D43 and D44 in evidence, please, your Honor.

Any objection?

Mr. Greenspoon: We will object to the relevancy of those two documents, your Honor.

(Pause.)

The Court: The objection is overruled.

Mr. Nizer: Thank you.

(Defendant's Exhibit D43 and D44 received in evidence.)

Q. In answer to the inquiry that Allen & Company made, Occidental replied by giving you the data of the midsummer 1961 joint venture, which is attached to the letter. Do you see that, Mr. Allen? A. D44?

Q. That's right. A. Yes.

Q. With the heading on the attachment, "Allen & Company share." Do you see that? A. Yes.

Q. And to the second question, the spring 1962 joint venture, Allen & Company, similarly replied, did it not? (562) A. Yes.

Q. And to the question, "Any other program in which we," meaning Allen & Company, "have a participation," the reply was the 1963 Occidental Petroleum exploration program?

Mr. Greenspoon: Your Honor, I don't think this witness can be called upon to construe somebody else's letters, and I object to that.

The Court: I must say I don't understand that objection. Here is a general partner who is one of the plaintiffs in the case and he is also the chairman of the board of Allen & Company, Incorporated, in which the general partnership, as I recall it, has an interest a well as members of the family, and are you suggesting that facts cannot be developed on the issue as to whether or not this witness had knowledge of certain conditions which existed, certain items that are part of the transactions that are involved in this case? I don't understand your objection.

Mr. Greenspoon: No, your Honor, I am not suggesting that at all.

The Court: Well, who else would know these facts?

Mr. Greenspoon: What I am suggesting is, this (563) witness cannot construe a letter written by Mr. Hebner.

The Court: He is not asked to construe the letter. He is being asked, if it comes to that, what his understanding of it was.

Mr. Greenspoon: If he saw it at the time, or now, that is the question.

The Court: He is the witness, Mr. Greenspoon, you are not the witness, and I said from the start of this trial, as I have repeated every so often, in other trials the testimony comes from the lips of a witness and doesn't come from statements of lawyers, whether it is the plaintiff's lawyer, the defendant's lawyer in this case.

By Mr. Nizer:

Q. You were familiar with—

The Court: I lost the question. Let's go back over the question, please.

Q. Item 3 on this letter refers in answer to the inquiry made by you, "Any other program in which we have a participation"—any other program—and the answer, item 3, is, "1963 Occidental Petroleum exploration program." You see that? A. Yes.

Q. There was a 1963 venture of some kind between (564) Occidental and Allen & Company. I think you told us about that, right? A. I didn't—I don't recall. I believe I said 1960, '61 or '2, but it is possible, I don't know.

Q. But you do see that in answer to the question, "Any other program in which we," Allen & Company, "have a participation," the only one given was the 1963 venture? You see that? A. I see that.

Q. My question is, did Allen & Company ever reply to this letter when it received a copy—anyone in Allen &

Company—stating, "We have a 25 per cent interest in another matter in Libya and you have not listed it"? Was any such writing, in substance, directly or indirectly, ever sent to Occidental? A. I don't know. I would assume no.

Q. So far as you know, up to this date there has never been a protest of the accuracy of the report made to your auditors by Occidental which omitted any claimed interested in 1966, August, 1966, of the 25 per cent claim that you made in this case, correct? A. That is too lengthy for me.

Q. Maybe so. I will repeat it slowly.

So far as you know, there has never been any (565) claim made by Allen & Company that the report made to its auditors had improperly omitted a 25 per cent claimed interest that you had with Occidental in Libya? So far as you know, no such claim ever was made by Allen & Company, was it? A. I don't recall any. These are auditors, this is not Allen & Company.

Q. You have admitted that a copy was received? A. Yes.

Q. All right. Does Allen & Company, the partnership, ever project its cash requirements? A. Not that I recall.

Q. Did you ever make such a projection in 1966? A. Cash requirements? I don't recall.

Q. From December 17, 1964, to December 11, 1967, when your deposition was taken, did you or anyone on behalf of Allen & Company, the partnership, ask Occidental to advise you for the year 1965 of any amounts of money expended by Occidental in Libya? A. No.

Q. Did you ask Occidental in writing or orally for any amounts of money expended by Occidental in Libyan oil matters for the year 1966? A. I don't know whether the auditors did, but I (566) don't believe we did. I would infer from this letter of August, 1966, that perhaps the auditors did.

Q. To your knowledge, was the letter of defendant dated August 12, 1966, D44, and the enclosures, accepted by your auditors, Katz, Zuckerman & Company, without objection? A. I would assume so.

Q. Of your knowledge, do you know what services Galic rendered in Libya? Yes or no, please. A. He introduced Dr. Hammer—

Q. No. Do you know, is my question. A. No.

Q. Did Galic ever write to you setting forth what services he had rendered? A. I don't recall. I would have to look.

Q. Didn't you reply to that "No" in a deposition which you gave, at page 216— A. It is possible, several years ago. I don't recall.

Q. Have you ever written to Mr. Galic asking what services he rendered? A. No, I don't believe so.

Q. Did anybody on behalf of Allen & Company do so, to your knowledge? (567) A. In writing? I don't know.

Q. Did you make the following answer to the following question, at page 155 of your deposition:

"Q. Did you tell him, Dr. Hammer, anything about the letter, Exhibit 13," and that is the termination, "on the telephone? A. No."

> The Court: As of what time are we speaking?
>
> Mr. Nizer: As of December—he testified to this as of December 11, 1967, when he gave that answer, your Honor.
>
> The Court: What is the question and answer?
>
> Mr. Nizer: "Did you tell him, Dr. Hammer, anything about the letter, Exhibit 13," the termination letter, "on the telephone? A. No."

Q. Did you make that answer to that question? A. Yes.

Q. At page 155—

The Court: I am repeating my question: with respect to what time is he talking there, when he gave that answer? You gave me the date of the deposition, in December, 1967.

Mr. Nizer: I thought you meant when he testified. (568) At any time, your Honor. It is all inclusive—

Mr. Greenspoon: I don't think so.

The Court: Well, you may clarify it, Mr. Greenspoon.

Q. At page 155 did you testify as follows to this question:

"Q. Did you tell him," meaning Dr. Hammer, "anything when you met him personally about Exhibit 13," which is now Exhibit 124, the termination letter. A. No."

Did you make that answer to that question? A. If it is there, it is my answer.

Q. At page 155 were you asked the following question:

"Q. Did you tell Dr. Hammer, so far as you can recall, that you considered his letter," that is, the termination letter, "meant nothing and therefore you were not going to reply to it? A. No."

Did you make that answer to that question? A. If it is there, I answered it.

Q. And, of course, between the dates of the termination letter of July 16, 1965, and January 31, 1967, you testified, did you not, that you had seen and met and (569) talked to Dr. Hammer many times? A. I don't recall.

Q. Pardon? A. I know I saw him in November of 1965, I saw him in August of 1966 at a meeting, but I don't know any other meetings or conversations. I don't recall. As a matter of fact, in the August, 1966, meeting I did nothing but say hello and goodbye.

Herbert Allen, for Plaintiff, Cross

(570) Q. I will put it in the form of a question and answer of the deposition, Page 114: Were you asked the following question and did you make the following answer:

"Apart from Dr. Hammer's letter dated July 16, 1965, was it your practice to reply to any written communication received from Dr. Hammer with regard to any business matter? A. I don't know."

Did you make that answer? A. Yes.

Q. Do you know, having had an opportunity to reflect upon it, perhaps, do you know of a single instance, in all your relationship with Dr. Hammer over the years where he wrote you a letter and you decided not to answer it? A. There were probably many.

Q. Probably? Can you point to a single one? A. Yes.

Q. Which one? A. December 17, 1964.

Q. He wrote you a letter? A. I believe so.

Q. And you didn't respond? A. That's correct.

(571) Q. What letter are you referring to, Exhibit A annexed to the complaint? A. I'd like to see it. It is fresh in my mind that I never reply to that letter, one of those letters, among others. I remember this one pretty clearly.

That's correct, I did not reply to this letter.

Q. And that's— A. This one I know about.

Q. And that's the letter in which Dr. Hammer replied to you that you would pay, he was not going to pay for Mr. Galic's expenses? A. That's right.

Q. He would pay for his people and you would pay for Galic at that early date. There was nothing to reply to, was there, he was just giving you an answer to your letter? A. Mr. Nizer, I am answering your question. I did not reply to the letter of December 17, P69.

Q. Of course not. Mr. Allen, I won't pursue this longer, just one question. Not every letter that is sent requires an answer, does it. Pardon? A. You may be right, I

don't know. I don't reply to all my letters. I didn't reply to this one in answer to your question, sir.

(572) Q. Did anyone ever send you a copy of the Kabazi letter dated February 16, 1966? A. No.

Q. Did your brother ever tell you that he had received such a letter from Mr. Kabazi? A. Yes.

Q. Did he tell you he had received such a letter from Mr. Galic? A. I don't recall. I believe he did, but I don't recall.

Q. Do I understand your answer to be that your brother told you— A. I believe he did.

Q. —that he received a letter from whom? A. From Mr. Galic. I believe he did.

Q. Not from Mr. Kabazi? A. From Mr. Kabazi? From Mr. Galic.

Q. Did your brother tell you who sent him that letter? A. I believe he said Mr. Galic sent to him.

Q. Did you testify at Page 307, "Did your brother ever tell you how he got D9, the Kabazi letter? A. No."

Did you give that answer to that question? (573) A. I did. If you read on I think you will find I changed it.

Q. I read at Page 307:

"Q. Did you know how this D9 Kabazi letter got into the possession of your brother? A. I did not."

Did you make that answer to that question? A. That's correct.

Q. Did you ever see any document which accompanied the alleged Kabazi letter? A. I don't recall.

Q. To your knowledge was the Kabazi letter forwarded to your brother Charles with any accompanying covering letter? A. I don't know.

Q. Aside from the date of February 16, 1966, appearing on the face of the Kabazi letter, have you any recollection as to when your brother Charles received a copy of that letter or talked to you about it? A. I think it was at the end of February or sometime in March.

Q. No, no, no. Listen to my question. I am not asking you what you think.

Aside from the date on the letter, have you any (574) recollection as to when your brother Charles actually received a copy of the letter? Have you or not, first. A. Yes.

Q. Let me read to you from Page 318 of your deposition.

"Aside from the date of February 16, 1966, have you any recollection as to when your brother did get that letter? A. No."

A. Possible.

Q. I ask you first whether you made that answer? A. If it is there I made it, yes.

Q. Did your brother say anything to you when you claimed he showed you a copy of the Kabazi letter? A. I don't recall his words.

Q. Are you sure he said something? A. I am sure he would have.

Q. I read the following from your deposition at Page 307:

"Q. What did your brother say to you when he showed you this letter? A. Nothing. The letter speaks for itself.

"Q. What did he say? Don't tell me your characterization. (575) A. Nothing."

Did you make that answer to that question? A. Absolutely, yes.

"Q. He just handed you D9, that is the Kabazi letter, and said nothing and walked away? A. That's right."

Mr. Greenspoon: I ask that the balance of the answer be read.

Q. There follows a comment by Mr. Greenspoon and another observation. You may read it and I will read something else.

Mr. Greenspoon: It is part of the answer to the same question.

Mr. Nizer: Let me read it to avoid this. Mr. Greenspoon objects to the form.

"A. Here is a very interesting letter from Ferdinand, a very interesting letter that is all I know."

"Q. Do you recall that? A. No, you are trying to put words in my mouth. I am trying to help you a little bit too.

"Q. What did your brother tell you? A. I don't recall.

"Q. Do you consider when I asked you what did your brother tell you I put words in your mouth? (576) A. No, I don't. I am not trying to argue."

All right, I have read the rest of it. A. I don't recall.

Q. On that occasion did you say anything to your brother regarding the Kabazi letter? A. I don't recall.

Q. Is it your testimony that your brother Charles—withdrawn. I have just covered that.

After you read the Kabazi letter, did you or to your knowledge anyone else of Allen & Company send a copy to Dr. Hammer? A. I don't recall. Probably not.

Q. Didn't you answer that question with definiteness "no" at the deposition? A. I said probably not.

Q. I read from Page 309 of Herbert Allen, "Did you ever send a copy of this letter to Dr. Hammer? A. No."

After learning of the aware of the concessions did you ever tell Dr. Hammer about the Kabazi letter? A. I don't believe so.

Q. Yesterday you testified that you did not see Exhibit 37, which is the September 18, 1964, letter (577) between Occidental and DeRovin. At any time between September 18, 1964, and January 31, 1967, do you recall your testimony to that effect? A. May I see it, please?

Q. You want to see what? A. What you are talking about.

Q. Well, let me try again. Do you recall that Mr. Greenspoon asked you yesterday whether you had seen the letter between Occidental and DeRovin dated September 18, 1964, at any time between September 18, 1964, and January 31, 1967?

> Mr. Greenspoon: Your Honor, my question was, did anyone from Occidental send it to him. That was my question. I don't think that we should have a misstatement of the witness' testimony.
>
> The Court: You refer to the record and we can avoid any questions as to what was said.

Q. Page 460, yesterday, question by Mr. Greenspoon.

"Q. Now, Mr. Allen, at any time from September 18, 1964, to January 31, 1967, did anyone from Occidental send to you copies of Plaintiff's Exhibits 36, 37 and 38? A. I never saw 36.

"Q. Did they send them to you during the period of (578) time is my question. A. No, not on 36, not on 37, no on 38."

A. My answer stands.

Q. Did you know whether or not you saw—withdrawn.

Did you see the DeRovin letter agreement of September 18, 1964, which is P37 from any other source, or is your answer inconclusive. A. No.

Q. You never saw it you mean? A. I never saw it.

Q. So that in March of 1965, you still didn't know anything so far as you are concerned personally about the DeRovin letter agreement of September 18, 1964, correct? A. Correct.

Q. Now, if you did not know this, why did you send to Dr. Hammer Exhibit P97, the DeRovin report? A. I sent that to my—it seemed to be a bad report on DeRovin, and I sent it to the manager of the account who is our partner in the deal. That was Dr. Hammer.

Q. You didn't know about DeRovin being in the deal at that time, did you really? A. I had met DeRovin in London when Dr. Hammer (579) I believe introduced me to him.

Q. But you didn't know, you say, about any contract arrangements? A. I did not about any contract. I knew that Dr. DeRovin was involved in some way in the deal but I didn't know any contract, no. Didn't know whether he had a contract with him.

Q. After receiving the letter dated July 16, 1965, which is P124 from Dr. Hammer, you gave that letter and the file relating to the Libyan matter, to your attorney Mr. Deer for his review and opinion, is that correct, sir? Isn't it? A. That's correct.

Q. Now I ask you at that time did the file contain the letter signed by you and Dr. Hammer dated December 17, 1964, P71? A. I presume so.

Q. Did it also contain your letter to Dr. Hammer December 24, 1964, P72? A. I presume so.

Q. Indicating that the ink modification to be mutually agreed upon on P71 was made by you in your own handwriting? (580) A. It should have been in our files.

Q. Did the file that you turned over to Mr. Deer also contain a copy of the DeRovin report, the report about him? A. I presume so.

The Court: My recollection is, I may be mistaken you testified yesterday that it did contain it?

The Witness: My secretary turned the files over, your Honor to—Mr. Charles Allen's secretary—

The Court: I believe there was a direct question on that yesterday.

The Witness: I did. It was in the files.

Q. And I believe you testified that Mr. Deer returned the file after he rendered his opinion in July '65, is that correct? A. That's correct.

Q. At that time did Mr. Deer request to be kept advised of any developments regarding the Libyan matter? A. I don't recall.

Q. Did you keep him advised of any new developments regarding Libya? A. I believe we did.

Q. Some time in October 1966, you testified that (581) Deer was given the file for his review? A. That's correct.

Q. What occurred between July 15, 1965, and October 1966, specifically, that you can recall that required a second review of the file by Mr. Deer? A. After Charles Allen's conversation on the telephone with Ferdinand Galic in the presence of Dr. Hammer, Charles Allen and myself, and the so-called settlement, Ferdinand Galic pestered the life out of us, and as the result of that we decided we better get Jimmie Deer to sort of take him off our back and see—and review the contract.

Q. Well, by that time, in October 1966, Galic had already settled his matter with Occidental several months earlier, hadn't he? A. Yes.

Q. Was the second review brought about by the discovery of some oil by Occidental before the announcement of the big discovery of oil? A. No.

Q. Did the file that you turned over to Mr. Deer in October 1966 contain the following:

"The blocking letter" as we have called it, of Galic, dated October 13, 1965, P141? (582) A. Mr. Nizer, the file was turned over by the secretaries. I would assume so, yes.

Q. The cable of Galic threatening to sue Allen & Company as well as Occidental, dated March 15, 1966, P163. A. I would assume so.

Q. The underwriter's questionnaire dated May 11, 1966, P8? A. I don't know.

Q. The copy of the—is there any reason why that would be kept out? A. No, I just don't know. I assume all of these, Mr. Nizer. I didn't hand them over. My

secretary was instructed to hand over our complete file, Charles Allen's secretary was instructed to hand over the complete Occidental file.

Q. So the answer to this is the same? A. I can't be specific.

Q. Did it contain so far as you know the $62 million debenture prospectus dated June 17, 1966, D11? A. It probably should have.

Q. The letter of Allen & Company to Occidental dated August 2, 1966, requesting information regarding (583) certain ventures other than Libya, D43, which I showed you before. A. Mr. Nizer, I can only suppose on all of these.

Q. That they were there? A. I would suppose, yes, I mean, I am not a file clerk, I am sorry. I don't know.

Q. Do you have any reason to doubt that it did—Galic's settlement with Occidental dated August 26, 1966, P185? A. As of when?

Q. When you turned over the file in October to Mr. Deer. A. I don't believe I ever saw the settlement, Mr. Nizer. I think I so testified, so I can't answer you. I believe that is in my original deposition.

Q. Do you recall any other additional letters or documents which were contained in the file when you delivered it to Mr. Deer in October 1966 except those that I have mentioned? A. Our entire file on Occidental was turned over to Mr. Deer, whatever it contained.

Q. Now yesterday, and a few moments ago again, you referred to this alleged conversation with Dr. Hammer concerning Galic, and you said that you were present, (584) Dr. Hammer was present, and Charles, and then you described yesterday the meeting, you gave a description, do you recall, about his looks, how disturbed he was, and the conversation, for several pages, 401, 492 of the record.

The Court: What is the date of that meeting according to the record?

Mr. Nizer: That would be in the summer of 1966 according to his testimony, your Honor. It is the "Get Galic off my back" alleged conference.

The Court: I think the witness testified yesterday to two meetings at the office of Allen & Company, I believe one was in August 1966, and the other November 1966.

Mr. Greenspoon: November '65, your Honor.

The Court: '65.

Mr. Greenspoon: The first was November '65 and the last August 1966.

The Court: You are referring to the August 1966 meeting, all right.

Mr. Nizer: Yes, it is August 1966.

Q. And after several pages of descriptions, at Page 493 of the record, you described, without my repeating it all, you only testified to it yesterday, what Dr. (585) Hammer said, what you said about that. A. Yes.

Q. Do you recall you said that Dr. Hammer said "Thank you very much. I will take it from here and left the room." That ended that description. A. Words to that effect, yes.

Q. Now I ask you whether on your deposition in referring to the same matter you hadn't given the following answers to the following questions, Page 185.

"A. The first time I heard about it was when Armand Hammer was in Allen & Company's office, and I was present, Charles Allen was present, and he asked Charles Allen to get Ferdinand Galic off his back.

Q. What office was this in? A. I don't recall.

Q. You said it was "in our office." What office? A. One of the two. It was Charles Allen's office or my office, I don't know.

Q. I am sorry, I should say question and answer.

"Q. Was anybody present besides you and Charles and Dr. Hammer? A. I don't recall."

Mr. Greenspoon: Would you please read the small change, Mr. Nizer.

(586) Mr. Nizer: If you permit me to develop this. This was his original answer and I will bring out the fact—I won't differ with that he made a change. Your answer—"Was anybody present besides you and Charles and Dr. Hammer?" You said "I don't recall."

And then you added "Anyone else?" In that answer later when you signed the deposition.

And then the question:

"Q. Do you recall anything else except the phrase 'to get him off my back'? A. That's all I recall."

I stop there for a moment. Did you make those answers? A. Yes.

Q. To those questions? A. Yes.

Q. Did you make the following answer to the following question:

"Q. Did Charles at any other time discuss that controversy except on that occasion when you were present? A. I don't recall."

Did you make that answer? (587) A. Yes.

Q. You gave a description yesterday about the 50-50 deal that Dr. Hammer changed to 75-25. Do you recall all that? A. Yes.

Q. And how you chided him for changing it, breaking his word with you as you claimed, and so on and how you called up Charles, your brother, and came back and agreed to the 75-25. A. Yes.

Q. That is just a quick summary to identify it? A. Yes.

Q. Now I read from your deposition at Page 111 and ask you if you made the following answer to the following question:

"Q. That is what I want you to tell me. A. The mere fact that I explained to Armand Hammer and the Associated Oil & Gas picture and that he and I were going to go joint on this deal with Maguire out, that Allen & Company and Occidental were going on a 50-50 deal, that is why I remember it all.

"Q. What did Dr. Hammer say to that? A. Nothing. He smiled.

(588) "Q. He was silent? A. That's right."

Did you make those answers to those questions? A. Absolutely.

On Page 113 of your deposition:

"Q. On that occasion did Dr. Hammer say anything to you rejecting the 50-50 proposal? A. No."

Did you make that answer to that question? A. That's correct.

Q. Pardon ? A. That's correct.

Q. Did he agree to it? A. No.

(589) "Q. He was just silent? A. Just silent."

Did you make those answers to those questions? A. That's correct.

Q. Yesterday you stressed the fact that Mr. Galic at all times talked of two very valuable concessions, in other words, he was specifying the specific valuable concessions, two, from the very earliest date that he could obtain. Do you recall that testimony? A. Yes.

Q. Now, in your deposition did you ever once when questioned about those conversations say anything about two concessions? A. I don't recall.

Q. Well, let me read from page 46 of your deposition.

"Q. What was that conversation you had? A. I told him that we have been approached by a friend of ours who stated that he could—he had a very interesting situation in oil—" It goes on, "—and I wanted to form a three-way group."

Did you make that answer to that question? A. Yes.

Mr. Greenspoon: Let's read the whole answer for (590) heaven's sake.

Mr. Nizer: For heaven's sake you read anything you wish when I'm through.

Mr. Greenspoon: He can't read only one line of the answer.

Mr. Nizer: The rest of it doesn't refer to the contradiction I want to set up. "I wanted to form a three-day group on it, Allen & Company, Occidental Petroleum Corporation and Associated Oil & Gas, that it was a tremendous deal, it was big enough for the three of us, and I asked him if he was interested, and he said, 'Very definitely.'"

I am not asking you about the rest of the conversation. I am asking you whether you ever repeated at any time in your deposition that there were two specific concessions that Galic said he could get, and you didn't, did you, in that answer?

A. I don't remember my entire deposition. I don't know.

Q. And I go to page 48 where the same subject came up again.

"Q. What precisely did you say about Galic on that occasion?"

Mr. Greenspoon: Other than he previously (591) testified to.

"A. Nothing."

And then when you signed the deposition you added except as previously testified to. Was that answer previously made "Nothing" your answer to that question? A. I don't understand your question. Was it originally made?

Q. When I first asked you this you simply said, what precisely did you say about Galic on that occasion, you said "Nothing." A. It should be as I originally stated.

Q. And as originally stated I have already read there was no reference to the two concessions as I read it to you. A. As you read it, no.

Q. No.

With respect to the conversations we have just been referring to in early '64, did you make any memorandum of your conversation with Dr. Hammer concerning this Libyan concession? A. Not that I recall.

Q. Did you ever state in writing to Dr. Hammer what you understood the conversation between him and (592) you in February or March of 1964 to be? A. Did I ever state in writing? I don't believe there were any exchange of letters, no. March, April or as late as May I said.

Q. Pardon? A. March, April or as late as May.

Q. All right. Did you send Mr. Galic any letter on this occasion that you had this discussion to confirm the conversation between you and him? A. I don't recall any.

Q. Did anyone on behalf of Allen & Company to your knowledge write to Galic to confirm what he had told you on the phone that you were making these efforts? A. I don't know.

Q. Did you send Dr. Hammer any letter on this occasion with respect to this matter? A. I don't recall any.

Q. Did you make any memorandum of your telephone call with the Associated? A. No.

Q. Did you ever write to Associated confirming what you say was your oral conversation? A. I don't recall any such letter.

Q. Did you make the following answers to the (593) following questions in your deposition at page 90.

"Q. Who introduced you to General DeRovin? A. Either Ferdo Galic or Armand Hammer.

"Q. What was said about General DeRovin by either of these gentlemen? A. Nothing.

"Q. How did they introduce him? A. A man who was going to be of assistance in Libya. That's all I knew.

"Q. Who said that? A. I don't recall.

"Q. Who was present at that meeting? A. Either Ferdo Galic and General DeRovin or Ferdo Galic, Armand Hammer and General DeRovin.

"Q. In other words, you are not sure that Dr. Hammer was there? A. I am not clear as to whether he was there or not."

Originally, did you make those answers to those questions? A. If you read on you will find the answer, the true answer to it, in my deposition.

Q. Would you be good enough to answer my question. A. There is a continuity to it, Mr. Nizer.

(594) Q. There is no continuity that has anything to do with this specific question I am asking, and if there is, it isn't your burden to tell me, your counsel will. My question is did you make those answers to these questions? A. Repeat it and I will answer.

Mr. Greenspoon: We will stipulate that those answers were given originally.

The Court: Yes, in the controversy I have lost them. Go back over them, please.

Mr. Nizer: I will reread those questions.

A. Okay.

Q. "Q. Who introduced you to General DeRovin? A. Either Ferdo Galic or Armand Hammer.

"Q. What was said about General DeRovin by either of these two gentlemen? A. Nothing.

"Q. How did they introduce them? A. A man who was going to be of assistance in Libya. That's all I knew.

"Q. Who said that? A. I don't recall.

"Q. Who was present at that meeting? A. Either Ferdo Galic and General DeRovin or (595) Ferdo Galic, Armand Hammer and General DeRovin.

"Q. In other words, you are not sure that Dr. Hammer was there? A. I am not clear as to whether he was there or not."

Did you make those answers to those questions? A. Absolutely.

Q. And subsequently, when you signed the deposition, you added at the end of "I am not clear as to whether he was there or not," you wrote it in in ink, my best recollection is that he was. A. Yes.

Q. And did you have any memorandum on which to refresh your recollection so that you had a recollection that he was there, Dr. Hammer was there? A. Yes.

Q. What memorandum did you have? A. Somewhere in that deposition you will see that Dr. Hammer was sitting with—I believe I stated that he was sitting with—in the cocktail lounge, that he was sitting, I believe, with DeRovin, he either introduced me to DeRovin or Galic introduced me to DeRovin, and that's what made me remember.

Q. I am asking—I move to strike that out as (596) not responsive. A. That's my reference.

Q. My question is, did you have any memorandum—A. No.

Q. —that refreshed your recollection? A. Memorandum? The deposition.

Q. And your explanation for this change was "Simply to give my best recollection," is that right? A. Yes.

Q. And did you have any better recollection in 1972, I believe it is—in 1970—in April 14, 1972 than when you testified in 1970.

I beg your pardon, I correct that.

Did you have a better recollection without any memorandum in April 14th when you signed this in 1972 than you had in 1967 when you testified to it originally? A. I read through it. I probably remembered something more.

Q. I didn't hear that. A. When I read through it I probably remembered something more.

Q. Just by reading it? A. If I signed it, it had to be accurate. I don't (597) sign falsehoods. That's one part of my life. I am very honorable.

Mr. Nizer: I move to strike all that out, your Honor.

The Court: I said I have been receiving a lot of statements. I will allow it to stand too.

Q. At your deposition at page 184:

"Q. Do you recall whether you ever discussed it" that's the blocking letter, we called it of October 13, '65, remember where Galic said I blocked. That's the one. Do you recall whether you ever discussed with Dr. Hammer that letter of October 13, 1965? A. I did not.

Q. Did you ever advise Dr. Hammer of its contents? A. I didn't discuss it with Dr. Hammer.

Q. Did you make those answers to those questions? A. Yes.

Q. Were they correct when you made them? A. Yes.

Q. Was the blocking letter that I have referred to the occasion for the November, 1965, meeting, is that the one that triggered it? A. No, that was part of it.

Q. You testified yesterday that you told Dr. Hammer (598) that Ferdinand Galic was to be considered the finder in this deal and he wanted to be protected. Do you recall that testimony? A. That's right. Yes.

Q. And you testified that Dr. Hammer said fine, that he agreed to that? A. Yes.

Q. And now I show you P31 dated September 5, '64, which is addressed to you from Dr. Hammer.

Mr. Nizer: Would you get that letter for him please, Mr. Greenspoon, P31.

In any event I will read it. You don't have to look at it. I refer to the second paragraph in which Dr. Hammer says:

"I did not assure you that Ferdinand Galic and Klehe & Company will be compensated to their satisfaction for their services in this matter and this will include an offered or carried interest in the deal as stated in your letter, Klehe & Company's contract with us provided for their compensation."

Did you receive that letter on or about the date it bears?

A. Yes.

Q. And did you also observe in the last paragraph (599) of Dr. Hammer's letter to you "I did say, and I am glad to confirm again that we would welcome Allen & Company's participation on a mutually satisfactory basis"? A. Yes.

Q. The proposed projects consisting of building an ammonia plant as well as applying for drilling concessions which projects are under consideration by the Libyan government having been submitted by me on my previous trip to Libya. A. Yes.

Q. You read that? A. Yes.

Q. So that you were made aware of Dr. Hammer's statement to you that he had been in Libya and had made some proposals previous to September, '64? A. I was aware of the statement in this letter only.

Q. Yes.

The Court: I think we will take our luncheon recess now and resume at 2 o'clock.

(Luncheon recess.)

(600) Afternoon session.

2 P. M.

HERBERT ALLEN, resumed.

Cross Examination Continued by Mr. Nizer:

Q. Mr. Allen, did you or your company ever agree with Mr. Galic on the precise percentage of your 25 per cent alleged interest in Occidental? A. No.

Q. To this day, there has been no understanding between you and Mr. Galic with respect to what percentage he is to have in any recovery in this action? A. In the telephone conversation that my brother turned and reported to Dr. Hammer and myself and which we heard, he told Mr. Galic that he could have up to 50 per cent of our 25 per cent if he settled the case with Hammer and worked along with Dr. Hammer.

Q. And you say that since then nothing has transpired to make that more definite? A. No.

Q. Can you explain in any way, does it refresh your recollection that Mr. Galic said he had a 50 per cent interest in your claim and, on top of that, guaranteed against losses but only profits? (601) A. I don't know anything about it.

Q. Pardon? I don't know anything about it.

Q. You were there when he testified in his deposition to that? A. I don't recall if I was.

Q. You don't recall it? A. No.

Q. In any conversation with Mr. Galic, did he ever say to you, in substance, that he had a 50 per cent interest, according to you, without loss and only with profit? A. I know our arrangement.

Q. Pardon? A. I know our arrangement, as I stated it.

Q. Did Mr. Galic attend your office in October, November, 1966, in connection with this lawsuit? A. Did he attend our office?

Q. Did he appear at your office? A. I don't know. I don't remember.

Q. Did he attend any conferences which were held in preparation for this lawsuit? A. Not to the best of my knowledge.

Q. Yon never saw Mr. Galic in October and November, (602) 1966, either in your office, Charles Allen's office— A. I don't know.

Q. You don't know or— A. I don't remember.

Q. You don't remember? A. Yes.

Q. Did you ever meet with your attorneys in preparation for this case? A. Yes.

Q. Was Mr. Galic ever there on those occasions? A. No.

Q. You said a moment ago that you knew what "our arrangement" was? A. Yes.

Q. What was "our arrangement"? A. Charles Allen reported to Dr. Hammer—to Mr. Galic that he could have up to 50 per cent of our 25 per cent if he settled with Dr. Hammer. That was stated in August, 1966.

Q. Thereafter Galic settled, didn't he, this claim with Occidental? A. I believe I told you that I never saw the settlement papers. I understand he settled.

Q. So therefore the condition you just mentioned (603) was fulfilled, was it not, if he settled you would give him up to 50 per cent? A. Yes.

Q. That was your offer. Did he accept that offer? A. He must have. It was reported by Charles Allen that he did, on the phone, but I don't know whether he did or not.

Q. Since then did he specify in any way what the amount is, as he understood it, he was to receive under that offer? A. No.

Mr. Nizer: That is all, your Honor.

Herbert Allen, for Plaintiff, Re-direct

Re-direct Examination by Mr. Greenspoon:

Q. Mr. Allen, did you fill out the underwriter's questionnaire, Exhibit D8 (handing)? A. No.

Q. Did anyone discuss it with you at any time— A. No.

Q. —before January 31, 1967? A. No.

Q. Did anyone, including Mr. Stern, ask you any questions in connection with the filling out of Defendant's Exhibit D8? (604) A. No.

Q. Now, Mr. Allen, who was the principal underwriter on the $61,168,300 worth of debentures, Exhibit D11? A. Lehman Bros.

The Court: When you say the principal underwriter, what do you mean by that term?

The Witness: They handle the books, they handle all the transfer of funds, that is their work, and their name appears on the left. Any name that appears on the left is known as the lead or head underwriter, in any offering.

The Court: But your commitment was equal to that of Lehman Bros.?

The Witness: That is correct.

The Court: And equal to that of Reynolds?

The Witness: Yes, your Honor.

The Court: According to the prospectus on page 24?

The Witness: That is correct, but they are known as the lead underwriter, if their name appears on the left. That is why there is so much bickering on Wall Street as to where the name appears.

By Mr. Greenspoon:

(605) Q. Who handled the books for the, we will it, 61,000,000 debenture issue? A. Lehman Bros.

Q. Did Lehman Bros. or anyone in Lehman Bros. consult you with respect to the contents of Defendant's Exhibit 11? A. No.

Q. Did anyone from Occidental consult you with respect to the contents of Exhibit D11? A. No.

Q. Did you read Exhibit D11 at any time prior to January 31, 1967? A. No.

Q. By the way, do you remember the first time you ever read this, Exhibit D11? A. When I was at the deposition, and I only read one or two pages of it.

Q. In this case? A. Yes.

Q. Mr. Allen, Mr. Nizer asked you on cross if you had ever reported anything about this Libyan venture to your accountants after July 16, 1965. What was the name of those accountants? A. Katz, Zuckerman.

(606) Q. Did you report anything at all to that accounting firm concerning this venture prior to July, 1965? A. No.

Q. I believe that Mr. Nizer asked you about whether you had reported this thing to your controller subsequent to July 16, 1965. Do you recall that? A. Yes.

Q. Is the controller the chief financial officer of Allen & Company? A. He was the financial officer of Allen & Company, Incorporated.

Q. What kind of a financial officer would you have at Allen & Company, or didn't you have one? A. We didn't have one.

Q. In any event prior to July 16, 1965, did you report the Libyan venture to any bookkeeper, controller, treasurer or whoever keeps the accounts of Allen & Company? A. No.

(607) Q. Did you attend the Board meetings of Allen & Company, Inc.? A. I believe I might have attended briefly four—three, four or five in ten—in a nine years' period.

Q. Were you the actual operating head of Allen & Company, Inc. in 1965, 1966 and following? A. In name, yes.

Q. Were you the actual, not— A. Yes.

Q. And did you participate in the day-to-day operations of Allen & Company, Inc. in 1965, '66 and so on? A. No.

Q. Who handled the day-to-day operations of Allen & Company, Inc. during those years, '65, '66 and following? A. A man by the name of F. W. Harden and Murray Lavin.

Mr. Nizer: I object to this as hearsay, your Honor.

The Court: Overruled.

Q. By the way, were the books of Allen & Company, the partnership, kept on an accrual or cash basis? A. Cash basis.

Mr. Greenspoon: Now, your Honor, by way of introduction to this problem I would like to state earlier (608) Mr. Nizer read to the Court what he represented to be a question and answer from Mr. Allen's deposition regarding the August 1966 conference, and I would like to read the questions and answers of Mr. Allen on his deposition relating to that August 1966 meeting.

Mr. Nizer: What page, please.

Mr. Greenspoon: I am starting at 230.

Q. "Q. Prior to the offering if we placed the date so as to take it past that, say June is the date of the—June 1966, from June 1966 to January 31, 1967, do you recall having any conversations with Dr. Hammer? A. One.

"Q. When was that? A. When Dr. Armand Hammer came in to our office.

"Q. When first? A. It was either July or August of 1966, somewhere around that area.

"Q. You were about to tell us what was said. That would be all right. What did he say then?"

Mr. Greenspoon: Then I interposed:

"Mr. Greenspoon: This is the July-August meeting?

"Mr. Nizer: 1966.

"A. Armand Hammer came in to the office and wanted to see Charlie or myself. He wanted us to get (609) Ferdinand Galic off his back. He wanted us to relieve him of his claim, etc. As a result of that Charlie Allen called Ferdinand Galic and asked him to please settle with Dr. Hammer for the sake of ourselves, that is, Allen & Company, and Occidental's joint venture. He told Ferdinand Galic that we had a 25% interest in the deal, and that if anything ever came of the deal, if there was any oil found, if there was oil produced commercially, if he wanted part of our 25%, then he could have it."

Were you asked those questions and did you give those answers? A. Yes.

Q. Mr. Nizer read this question from page 318 and I will reread it so as to get it in context:

"Q. Aside from the date of February 16, 1966, which is in Defendant's Exhibit 9 for identification, have you any recollection as to when your brother did get that letter? A. No.

"Q. Aside from the date which Defendant's Exhibit 9 for identification bears, have you any recollection when he talked to you and showed you this letter? A. I told you I thought it was some time after that date when we received it."

(610) Were you asked those questions and did you give those answers? A. Yes.

Q. Were they correct? A. Yes.

Q. Now, sir, at page—Mr. Nizer read a series of questions beginning on page—

> Mr. VanVoorhis: Pardon me, before you pass that, should it appear—perhaps it already does—that Exhibit 9—
>
> Mr. Greenspoon: Is the Kabazi letter.
>
> Mr. VanVoorhis: —is Exhibit 158 I think for identification in this trial. May we have that appear in the record.

Mr. Greenspoon: Mr. Nizer read some questions on page 113. I am going to retreat back to 112 to put that meeting in context.

"Q. Do I misunderstand you when you testified previously as I thought that Mr. Galic and you and Dr. Hammer were together with General deRovin? A. In the cocktail lounge. After that we walked out—when we were walking out of the cocktail lounge, I pulled Armand to one side and explained the picture to him.

(611) "Q. What you told him was still in the cocktail lounge, on the side of the cocktail lounge? A. Or in the lobby of Claridge's.

"Q. Or in the lobby? A. That's correct. That was the 16th.

"Q. Galic and General deRovin were there but out of the hearing at the other end of the cocktail lounge? A. I don't know whether they were. We walked away from them."

So far, were you asked those questions and did you give those answers? A. Yes.

Q. Now to continue:

"Q. So that at the time you told Dr. Hammer about this—"

Mr. Nizer: Where were you reading from now?

Mr. Greenspoon: 113. That question was objected to and not answered.

"Q. So that at the time you told Dr. Hammer about this, you and he were alone, a distance away from the cocktail lounge— A. We were a distance away from Ferdinand Galic and General DeRovin. Whether it was downstairs I don't know, but we were a distance away.

(612) "Q. And out of their hearing? A. That's correct."

Were you asked those questions and did you give that answer? A. Yes.

Q. Now, did that series of questions and answers relate to the first meeting you had with Hammer in London? A. Yes.

Q. Do you know or can you recall whether Mr. Nizer ever asked you a single question on your deposition concerning the next meeting or series of meetings you had with Dr. Hammer? A. I don't believe he did.

Q. Now, I would just like to read one question about the issue of whether there was a mention made of two concessions. Page 123, first question:

"Q. There is a reference to the fact that we agreed to the same arrangement with you on the possible—"

That's the wrong one. Excuse me, I withdraw that.

This is page 100:

"Q. What did Galic in your presence tell Maguire the deal was on which he 'chickened out' to use your phrase? A. He told him he had two areas of land which (613) he could deliver. He mentioned some numbers in the 42B and 44, something like that, that he thought he could deliver, that he could deliver, and that Walter Maguire said, 'How much money will it take?' "—and if you want me to read, I will read the balance.

Mr. Nizer: What page are you reading?

Mr. Greenspoon: Page 100. If you want me to read it I will.

"Ferdinand Galic said, 'I thought you knew all about that.' He said, 'How much will it take?'

"He said, 'Well, it was going to take well up in the millions and millions of dollars.'

"That's all you had to say to Walter. He walked out of the deal."

Were you asked those questions and did you give those answers? A. Yes.

Q. Now, I will start reading at page 138, the very first question which Mr. Nizer read. I will reread it.

"Q. 'To be mutually agreed upon' follows the sentence 'this includes sharing costs and profits'. What was the cost to be mutually agreed upon as you understood it in your conversation with Dr. Hammer? A. Whatever costs were incurred in relation to (614) Libya.

"Q. Unless you agreed upon them, they weren't to be expended by Dr. Hammer?"

> Mr. Nizer: I object to those questions and answers on the ground that there is an attempt to vary the agreement that was made in writing. It is true that this was part of my own deposition, your Honor. I have the right to explore it, but it is also subject to, taken to objection. I think it is an appropriate objection.
>
> The Court: I will take it.

"A. That's not true.

"Q. Then I don't understand it. A. Any expenses incurred in the Libyan matter were to be shared on a 75/25 basis.

"Q. And I asked you how was the approval, the 'mutually agreed upon' to operate towards that end? A. How was the approval?

> "Mr. Greenspoon: What was the procedure is his question.
>
> "Mr. Nizer: That's right.

"A. Whenever Armand presented us with our share of expenses, we would have paid our proportionate share or taken our proportionate share of profits."

Were you asked those questions and did you give (615) those answers? A. Yes.

Q. Moving over to 139:

"Q. If Dr. Hammer or Occidental submitted his costs to you as you now have testified, you would pay 25% of such costs if they referred to Libya not to some other venture? A. Yes."

Were you asked that question and did you give that answer? A. Yes.

Q. And then on page 142:

Mr. Nizer: Do you want to read 140? Excuse me, go ahead.

Mr. Greenspoon: That question you read. Do you want me to reread it?

Mr. Nizer: Excuse me for interrupting.

Mr. Greenspoon: Page 142:

"Q. You told me as I understand it that 'to be mutually agreed upon' was intended to eliminate any costs that might be charged to this venture that didn't refer to Libya; is that correct? A. Correct.

"Q. If they were costs that were legitimately (616) incurred for the Libyan venture, then do you understand that Dr. Hammer was to be in charge and to manage it and to incur those costs, or don't you? A. Yes."

Were you asked that question and did you give that answer originally? A. Yes.

Q. And did you then add to your answer:

"I so understood."

A. Yes.

Q. On page 143:

"Q. I ask you since you made this insertion in at least the language, whatever the conversation was—I ask you whether if Dr. Hammer in the management of the enterprise incurred or paid certain costs in the Libyan matter, limited to that, whether you had to give prior consent to such costs?"

Mr. Nizer: May I have a general objection to these questions, your Honor.

Mr. Greenspoon: May I proceed, your Honor?

The Court: Go ahead.

(Continuing) "A. As the bills were presented to us we would have paid them.

"Q. And since my question was whether you had (617) to approve the bills in advance of their being presented to you, I take it that your answer means no, you wouldn't have to approve them in advance of when it was presented. You paid them if it was limited to Libya?"

And then there was a lot of colloquy and finally the answer comes:

"A. No, they would not have to be submitted in advance. We would have paid our proportionate share as presented."

Were you asked that question and did you give that answer? A. Yes. Yes.

Mr. Nizer: I move to strike that out on the ground that this is an interpretation and construction by the witness and not admissible to vary the document.

The Court: Well, you asked a number of questions of the witness as to what he understood the term to mean, did you not, in your cross examination?

Mr. Nizer: I didn't ask him with respect to whether the "mutually agreed" meant something else. No, your Honor, this is a new subject counsel is raising.

The Court: I will take it for what it is worth.

Mr. Greenspoon: I had interposed to one of these questions just to make it crystal clear what Mr. Nizer's (618) question was that he was asking for the witness' understanding as of December 1964

and not as of the date the deposition was taken, and Mr. Nizer concurred I think in that.

Q. By the way, did Dr. Hammer ever say to you that he would submit proposed expenses in advance of incurring them? A. No.

Mr. Nizer: Objection, sir.
The Court: He has answered.
Please don't lead him on though.
Mr. Greenspoon: All right, sir.

Q. Now, Mr. Nizer read on page 215 the following question and answer. I will read it again and put the context straight.

"Q. Was there ever any discussion with Robert Lehman or anyone in his firm with you as to the divulging of your claimed 25% interest in the Libyan deal? A. I don't recall."

Do you recall that you were asked that question and gave that answer? A. Yes.
(619) Q. Next question:

"Q. Are you certain that you did teh Robert Lehman that you did tell Robert Lehman that Allen & Company, the partnership, had a 25 per cent interest with Occidental in the Libyan matter? A. I told Robert Lehman."

Then Mr. Greenspoon interposed:

"Are you certain?
"The Witness: Yes, I am certain. Not Robert Lehman alone.

"Q. Who else? A. Joe Thomas and the other people who were there. I don't know who else was there. There were others there.
"Q. Were they all people associated with Lehman Brothers? A. Yes.

"Q. Was anyone there besides you for Allen & Company? A. No.

"Q. Or for Allen & Company, Inc.? A. No."

Were you asked those questions and did you give those answers? (620) A. Yes.

Q. I don't think I asked you this, but if I did I will withdraw it as duplicitous, duplicative.

At any time prior to 1966 had Allen & Company, Inc. participated in any underwritings for Occidental? A. Yes.

Q. When? A. January 1965.

Mr. Greenspoon: May I have just one moment, your Honor.

Q. Mr. Allen, did you see Defendant's Exhibits 43 and 44 on or about the dates they bear?

The Court: What are 43 and 44? Will you remind me?

Mr. Greenspoon: 43 is from Allen & Company to Paul C. Hebner of Occidental and 44 is—

The Court: Are those the letters with respect to what—

Mr. Greenspoon: The auditors.

The Court: Yes.

A. My answer is no.

Q. Did you ever see them at any time prior to January 31, 1967? A. No.

(621) Mr. Greenspoon: No further questions.

Re-cross Examination by Mr. Nizer:

Q. Mr. Allen, Mr. Greenspoon just asked you whether you consulted or talked to your attorney about the questionnaire which is D-8. A. Yes.

Q. You told him that you had not, as I understood it. A. That's correct.

Q. At any time, is that right? A. I don't ever recall talking to him. At any time prior to what date?

Q. At any time before January 1967 did you discuss the subject of the questionnaire D-8 with your attorney, any attorney? A. I don't recall it.

Q. You told Mr. Greenspoon a moment ago that you didn't. Are you sure now that you didn't or have you no recollection. A. I did not.

Q. You did not? A. No, I don't believe I did.

Q. I read to you from Mr. Deer's deposition and ask (622) you if that refreshes your recollection, page 13.

Mr. Greenspoon: Wait a minute. Could you hold on just a moment, Mr. Nizer?

Thank you. Go ahead.

Q. "Q. Now, what was the occasion which brought this questionnaire, Defendant's Exhibit 8, to your attention in October 1966? A. Well, I believe we were discussing in general the position of Allen & Company might have with Occidental Petroleum Corporation in connection with a joint venture.

"Q. You say 'we.' Who is 'we'? A. Well, I was probably talking to Charles and/or Herbert Allen.

"Q. When you say probably, have you a recollection that you did? When you say probably you mean that you did and that it was with both of them? A. Well, it was hard for me to fix any particular time. I talked to both Charles and Herbert Allen frequently, either alone or together, and whenever you have them together, they are both walking in and out of rooms. So they are never together at any particular time usually, but I think I did discuss it with them at this—

(623) "Q. By 'this' you mean Defendant's Exhibit 18? A. Yes, which is the questionnaire."

Without reading further, does that refresh your recollection that you discussed at sometime the questionnaire D-8 with your counsel, Mr. Deer? A. It doesn't refresh my memory.

Q. Do you deny that you had such a discussion with Mr. Deer? A. No. I don't remember any.

Q. I read the following to you and ask you if this perhaps helps to refresh your recollection. I read from Mr. Deer's deposition at page 31.

"Q. When you discussed the underwriter's questionnaire with Mr. Herbert Allen and Charles Allen as you testified before at that time had you made any study of the prospectus to find out whether there was such a disclosure of the Allen & Company's interest, claimed interest, in this joint venture with Occidental or didn't you at that time? A. I believe I did.

"Q. And did you find that there was such a disclosure or there wasn't. A. I have forgotten what I found."

Do those answers to those questions indicate to (624) you that he made a study of the prospectus as well as the questionnaire and discussed both of those matters with you? A. I can't speak for Mr. Deer, but I don't recall them.

Q. Do you deny that you had these conversations? A. I don't deny and I don't say I did. I don't recall.

Q. From your experience in these matters, where there is a lead underwriter—which you say in this case was who? A. Lehman Brothers.

Q. (Continuing)—and there are underwriters, it is the purpose of the questionnaire, the underwriter's questionnaire, to supply in proper form in writing information which would comply with the SEC rules as to whether any director or officer of one of the underwriters who was not the lead underwriter has any relationship with the issuer? Isn't that the purpose of the questionnaire? A. It's too legal for me.

Q. Is it? A. I know there is a questionnaire that has to be filled out, but I don't—I have never seen a (625) questionnaire, Mr. Nizer. It's not in my department. I have never seen a questionnaire and I doubt whether many

people in Wall Street at the tops of firms have ever seen questionnaires

I might add, Mr. Nizer—

Q. Just a moment, Mr. Allen. You say that in all the years that you have been a banker that you have never seen a questionnaire in any issue? A. I don't ever recall having a questionnaire presented to me or having seen one.

Q. You deny to the best of your ability that you ever looked at a document called underwriter's questionnaire?

Mr. Greenspoon: Your Honor, I object to this as improper re-cross.

The Court: I will allow it.

A. We are much too busy to look at a questionnaire.

Q. No, answer my questions. I didn't ask you how busy you are. A. My answer is I never recall looking at a questionnaire.

Q. Whether you looked at it or saw it, you know from your experience that where there are several underwriters the duty of one underwriter is to inform the (626) lead underwriter so that he will not be in violation of the SEC rules to give him certain information? A. That is correct.

Q. And the questionnaire is the form which has been adopted to give that information to the lead underwriter, right? A. That would be correct.

(627) Q. Did you know in 1966 that it is the duty of an underwriter to divulge any material relationship that he may have with the issuer? A. Yes.

Q. And that the way in which the divulgence is made to the lead underwriter, who is responsible for the final form, or all three underwriters, in this case, is through a document which we call now the questionnaire?

Mr. Greenspoon: I object to that as ambiguous and a confusing question, improper in form.

The Court: Do you understand the question?
The Witness: I do, your Honor.

A. I know something has to be filled out but I don't know what papers. I know papers have to be filled out, I know divulging has to be made.

Q. Do you know whether in underwriting certain rules, regulations of the Securities and Exchange Commission are to be complied with by underwriters and registrants? A. Yes, and that's why we have lawyers.

Q. That's what? A. Why we have lawyers.

Q. And that is also why you have the duty to fill out the information on some form that will be accurate to give to the lawyers to forward on, is that right? (628) A. That's right.

Q. I show you D8 and I want you to read as of today Subdivision A of paragraph 3.

Mr. Greenspoon: Where is that?
Mr. Nizer: I withdraw that question.

Q. Read Subdivision A of paragraph 3 of D8, and I ask you whether as of the date it bears it is an accurate statement?

Mr. Greenspoon: He wants you to read this, 3A (indicating).
Mr. Nizer: Yes, "Neither we nor any of our officers, directors, partners have a material relationship," and so on.

Q. Just read that to yourself. A. I have read it.

Q. Is that an accurate statement as of the date that this bears, which is May 11, 1966? A. Yes.

Q. You were asked whether you reported anything with respect to this matter to your controller, and Mr. Greenspoon asked you who your controller was. Was it Mr. Stern? A. I think it was Mr. Stern at that time.

Q. And Mr. Stern— (629) A. I think he was treasurer —controller was the same.

Q. Is that the same Mr. Stern, Herbert L. Stern, vice president, who signed the questionnaire, D8? A. Yes.

Q. When was Mr. Stern first employed by the corporation? A. It was formed in 1964.

Q. And is that when he was first employed? A. By the corporation. That was the first time anyone was employed by the corporation.

Q. Was he previously employed, the same gentleman, by the partnership? A. Yes.

Q. How long had he been employed by the partnership? A. I don't know, a little over 15 years. I am really not accurate on that.

Q. After 1964, did he still continue, did Mr. Stern still continue to render services to the partnership? A. Yes.

Q. And did Mr. Stern have access to the partnership files? A. Yes.

Q. You were asked by Mr. Greenspoon concerning (630) page 113 of your deposition, and his concluding question was, "Was this the first meeting that you had?" And do you recall you said yes? Does that refresh your recollection, without my going over it again? A. First meeting of what?

Q. With Dr. Hammer. Maybe that is unfair to you—

Mr. Greenspoon: In London?

Q. With respect to Maguire & Associates in London. That is what he asked you, whether that refreshed your recollection that it was at the first meeting in London.

Mr. Greenspoon: Your Honor, that is not my question. My question was, "Did this occur at your first meeting with Dr. Hammer in London?"

Mr. Nizer: I accept that.

Q. And you said yes, didn't you? A. I don't know what you are saying. I will answer you if you tell me what you are saying.

Q. Let me read from page 113, a sentence after Mr. Greenspoon read:

"Q. On that occasion did Dr. Hammer say anything to you rejecting the 50-50 proposal? A. No."

A. That's right.

Q. That conversation took place at a second meeting, (631) didn't it? A. That conversation took place either the night of December 16th or the day of the 17th, or both days—or both days.

Q. So that was the second meeting, not the first meeting, that you had on that occasion? A. No, it could have been—

Mr. Greenspoon: Do you mean with Dr. Hammer?
Mr. Nizer: Yes.
Mr. Greenspoon: I object to the question.

A. It either took place—

Mr. Greenspoon: No, he wants—answer his question.

Q. Did you answer that? I didn't hear it. A. I think it took place on December 16th, but it could have taken place on both days, December 16th and 17th.

Mr. VanVoorhis: September?
The Witness: September 16th, 1964, and September 17, 1964. . Excuse me.

Q. Counsel read various parts of the examination before trial of yourself, your deposition, and he skipped at page 140—he went from 138 to 142, and I will read one question from page 140:

(632) "Q. What costs were to be mutually agreed upon? A. Any costs relating to the Libyan matter."

Did you make that answer to that question? A. Yes.

Q. Now I take you to page 218:

"Q. Did you ever write to Lehman Bros. anything in which you included the 25 per cent interest in fact as you

have it of Allen & Company in the Libyan venture? A. I never wrote anything to Lehman Bros., no."

Did you make that answer? A. Yes.

Q. Did you ever write, either by letter or by a corrected questionnaire, anything to Lehman to change what you had stated, what your company had stated through your vice president in Exhibit D8? A. No.

Mr. Nizer: That is all, sir.

The Court: I have one or two questions to ask and I want to make sure I understood the witness' answers.

By the Court:

Q. I believe you were asked with reference to this questionnaire, particularly 3A, whether that was an accurate statement as of the date of the questionnaire, which is May 11, 1966. What was your answer to that (633) question? A. My answer is that we have no—my answer is—I am sorry, the question is—my answer was no, I believe. I am trying to think. I don't know the question. I am confused for the moment.

Q. I don't want you to be confused. A. I am sorry, I am.

Q. I may be wrong, but my recollection is that you said yes, it was an accurate statement? A. Oh, yes, this is an accurate statement, yes. I beg your pardon, your Honor. Yes, this is an accurate statement. I am awfully sorry.

Q. Your contention—when I say "your," I am referring to the plaintiffs, Allen & Company, which consists of your brother, you, at least as general partners— A. Yes.

Q. —and others. You claim a 25 per cent interest in what has been referred to as the joint venture? A. Yes.

Q. Your assertion is that that joint venture was in existence as of this date, May 11, 1966? A. Yes.

Q. Didn't you regard the 25 per cent interest as a material relationship with the Occidental Company? (634) A. No. It didn't mean that anything would ever come of it.

Q. Is that the basis on which you give the answer? A. No, but your Honor—

Q. I want your answer. Frankly, nobody need have any doubt as to why I am asking these questions. Ultimately I must decide the fact issues and I do want to understand the witness' position about this. A. Well, I am not legal, but—

Q. Forget all the legal aspects of it. I am putting a question to you as a layman but as an experienced investment banker—as I recall, your brother's testimony was that Allen & Company was among the three or four leading investment companies, or at least had the third or fourth place— A. Financial.

Q. —in the investment banking world, I think is what he said, and at least in the first ten. A. Yes, financial.

Q. I am putting the question to you again, did you not regard a 25 per cent interest in a joint venture with the Occidental Petroleum Company, which was to be the issuer in this case, as a material (635) relationship? A. In regards to the Libyan concessions, your Honor—

Q. That is all we are talking about here. A. —I did not know, and I have been involved in many deals that never materialized and I didn't consider 25 per cent or 90 per cent of something that didn't materialize to be worth anything or to have any value. I think I would be misleading in our statement if I put it in as having a value.

Q. I will not go back to what was discussed this morning as to whether or not prospective purchasers were to be informed of that, but accepting your last answer, wasn't your testimony yesterday that when you were in London, either on September 16th or September 17, 1964, and when Mr. Maguire, was it, of Associated Gas, indicated that he had no interest in going in on this deal

on the basis of a third to Associated Gas, a third to Occidental and a third to you, that Dr. Hammer said to you then, when you suggested a 50-50 deal, that there would be no 50-50 deal? A. Yes.

Q. And you were upset about that? A. Yes, I was.

Q. I don't know if your language then was that he (636) welched on the deal, but the substance of it was that he was running out on an arrangement you had made? A. Yes.

Q. And that you then called your brother? A. Yes.

Q. And your brother had a different attitude? A. Yes.

Q. Your brother said to take it on the 75-25 per cent basis, which is what Dr. Hammer proposed? A. Yes.

Q. And your brother said to you, "What is the difference? This thing runs into the hundreds of millions of dollars"? A. If it is going to.

Q. In the light of that, do you say that was not a potentially important asset so that it couldn't be considered —you couldn't be considered as having a material relationship? A. Well, your Honor, we have been in so many that didn't pan out, I think it would be misleading to the public. I was surprised it was even put in the prospectus, after I read the prospectus. They could be dry holes.

Q. They could be. On the other hand, in reverse, they could be very productive? (637) A. That is true.

Q. That is the reason I called your attention to what you testified to yesterday, as to why your brother thought you ought to accept the 75-25 proposal as against the 50-50 proposal. A. If, as it was represented, there could be millions of dollars, hundreds of millions of dollars. Your Honor, I am in many deals that never pan out, never pan out. We have $10,000,000 in a deal that was supposed to return us hundreds of millions of dollars and we have not had a penny from it.

Q. I take it, in reverse, you have been in other deals where the wheel of fortune went the other way? A. Only in stock ventures, unfortunately, not in oil. We

have had bad luck in oil. We have had a lot of experience in oil, your Honor, and it has never panned out.

Q. I have just two other questions. I am interested in the inquiries that were made of you by both your own counsel and also defense counsel, and that is with respect to the sharing of costs to be mutually agreed upon. Do I understand your testimony to be that the mutually agreed upon was to exclude costs that were not properly allocable to the Libyan oil deal? A. Yes, your Honor.

(638) Q. Is that a reasonable interpretation by the use of the term costs to be mutually agreed upon in the light of the fact that you were only talking of one deal? A. I am not sure that I wrote those words in, your Honor.

Q. I understood you to say you wrote the words. A. I said either Dr. Hammer or myself or both of us.

Q. But you consulted with your attorney, Mr. Deer, as I remember it? A. After that.

Q. What else could that refer to other than the cost in developing this concession? A. Your Honor, I have had three and a half years of high school and I try to fill in wherever I can.

Q. I don't know about your high school education, but from what I have heard here, you have done remarkably well and you seem to be a knowledgeable person. A. I do the best I can—

Q. I am asking you could this refer to anything else but the costs? A. No. It probably shouldn't have been put in there.

Q. All you are talking about is one deal and it is the cost of that deal? (639) A. Yes. It probably shouldn't have been in there.

The Court: If anybody else has any questions on what I emphasized for the record—

Mr. Greenspoon: I have one question.

The Court: Counsel, neither for plaintiff nor defendant, should draw any inferences from these

questions. I always tell that to jurors, so I am instructing myself and the lawyers.

Mr. Greenspoon: I have one question, because I don't think the witness ever answered Mr. Nizer's question as to whether he was talking about the first meeting with Dr. Hammer or a second meeting.

The Court: Well, clear it up.

Mr. Greenspoon: I can clear it up with one or two questions.

Re-direct Examination by Mr. Greenspoon:

Q. "Q. Mr. Galie and General DeRovin were there but out of hearing at the other end of the coktail lounge? A. I don't know whether they were. We walked away from them."

Were you asked that question and did you give that answer? A. Yes.

(640) The Court: You asked that before.

Mr. Greenspoon: Yes. I just wanted to fix the place.

Q. Then you go on, some more questions, and then:

"Q. On that occasion, when you walked away from DeRovin and Galie, did Dr. Hammer say anything to you rejecting the 50-50 proposal? A. No."

Now, my question is, was that on the first meeting with Dr. Hammer or a later meeting with Dr. Hammer? A. That particular answer was on the first meeting.

Q. With Dr. Hammer? A. Dr. Hammer.

Q. Did it follow the meeting with Mr. Maguire? A. Yes.

The Court: He testified to that, that after he had the talk with Mr. Maguire and Mr. Maguire said he wasn't interested, that he met with Dr. Hammer.

The Witness: Yes.

Re-cross Examination by Mr. Nizer:

Q. At the time of the date that his Honor put to you, May 11, 1966, you knew that concessions had already (641) been awarded to Occidental, right? A. Only what I read in the paper or was telephoned about.

Q. You knew about it, however, it came— A. I never heard of it from Dr. Hammer.

Q. I didn't ask you from whom. If you will be good enough to answer my question: you knew about it, whatever the source? A. Yes.

Q. And therefore you knew that since concessions had been awarded there were going to be exploration costs to find out if there was a dry hole or a good oil well? A. Yes.

Q. And you also knew, from what you already told us, that that would amount to tens of millions of dollars, and I think you said possibly hundreds of millions? A. Not to that question, no, not for seismographic work, which you have to do first. I think you are ahead of yourself on that.

Q. I think you testified that one seismograph alone could cost a million dollars or more? A. It could. It could cost a lot less too.

Q. I think you told his Honor when he reminded you (642) of it that in your conversation with Galic, Galic used the phrase "It will amount to hundreds of millions of dollars"? A. That's correct.

Q. Putting your mind off profits for a moment—I know that is difficult— A. I don't know of any in Wall Street today, but go ahead.

Q. All right, sir. According to your theory, denied vigorously by the defendant, but according to your theory, you were bound even before you mutually agreed on the amounts to pay 25 per cent of the costs and expenses, right? That is your theory? A. Yes.

Q. So that on your theory, on May 11, 1966, if there was going to be millions of dollars of exploration costs, your company would have had to contribute to Occidental and thereby reduce its loss, if there was a loss, by 25 per cent, right? A. Yes.

Q. Therefore, did you consider your obligation, as you now tell his Honor it was, a material relationship in that even if there was a loss you would have to put up millions of dollars toward it? (643) A. Well, it wouldn't have hurt Allen & Company. It would have ruined Occidental If they put up their 75 per cent, they would have had to go into bankruptcy.

Q. I am not asking you— A. You asked a very lengthy question and—

Q. Sometimes I do. I apologize for that, but this one was half the size. A. Well, that is pretty long.

Q. I am asking you whether your obligation under your theory in the event of a loss to reduce the Occidental loss —never mind what would happen later—created a material relationship between you and Occidental? A. Yes. If we had been billed, we would have paid.

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(646) Mr. VanVoorhis: I am now reading from the deposition of ARMAND HAMMER taken as an adverse party, page 4:

"Q. Will you state your full name and residence address for the record, Dr. Hammer? A. Armand Hammer, 10431 Witon Drive, Los Angeles 24.

"Q. For the last seven or eight years have you been an officer, director and stockholder of the Defendant Occidental? A. Yes, sir.

"Q. And what office have you held during those past few years? A. I have been president and chairman of the board.

Armand Hammer, E.B.T.

"Q. And are you also the chief executive officer of Occidental? A. Yes.

"Q. Does Occidental have any executive committee? A. No.

"Q. Does it have any committees of the board at all? A. No.

(647) "Q. During those years did Occidental have an employee by the name of Mr. T. E. Brenner? A. Yes.

"Q. And what was his capacity? A. He was the head of our Paris office.

"Q. And to whom did he report? A. He reported to me.

"Q. And during that period of time did Occidental have an employee by the name of Mr. Vaughan? A. Yes.

"Q. What was his full name? A. Richard Vaughan.

"Q. What was his capacity during those years? A. He was chief geologist.

"Q. Was he also an officer of Occidental? A. Yes, part of the time.

"Q. And what office did he hold? A. Vice president.

"Q. And to whom did he report. A. To me.

"Q. When for the first time, if ever, did you meet a man by the name of Ferdinand Galic? A. I met him in London at the Claridge Hotel when he was introduced to me by Mr. Herbert Allen.

(648) "Q. And approximately when was that? A. It was about September 17.

"Q. And the year? A. 1964.

"Q. Had you heard the name Ferdinand Galic prior to meeting him on September 17, 1964? A. Yes.

"Q. And from whom did you hear it and when? A. I heard it the first time from Herbert Allen, who telephoned me in Los Angeles in the early part of August 1964.

"Q. By early part do you mean prior to August 10, 1964? A. Yes.

"Q. Have you ever met an individual by the name of Ogbi? A. Yes.

"Q. And where and when did you meet Mr. Ogbi? A. I met him at the Claridge Hotel in London on or about September 17, 1964.

"Q. Prior to that date had you ever heard of Mr. Ogbi? A. No.

"Q. And who introduced you to Mr. Ogbi on or (649) about September 17, 1964? A. I am not sure. I believe it was Mr. Brenner.

"Q. Had you ever met an individual by the name of General DeRovin? A. Yes.

"Q. When and where did you meet General DeRovin? A. I met him at Claridge Hotel on or about September 17, 1964 when he was introduced to me by Mr. Herbert Allen and Mr. Galic.

"Q. Prior to meeting General DeRovin on September 17, 1964 had you ever heard his name mentioned? A. Yes.

"Q. And who mentioned his name to you and when? A. Mr. Herbert Allen mentioned his name to me in the conversation I referred to in the first part of August 1964 when he mentioned that he was a friend of Mr. Galic's.

"Q. Now had Mr. Brenner mentioned General DeRovin's name to you prior to Herbert Allen mentioning it? A. No.

"Q. Have you ever met a man by the name of (650) Fuad Kabazi? A. Yes.

"Q. When and where did you meet Mr. Kabazi? A. I met Mr. Kabazi in Tripoli. He was the Minister of Petroleum and in connection with our concession activities I met him. I can't state exactly how many times or exactly when.

"Q. Can you fix the year in which you first met Mr. Kabazi? A. 1966.

"Q. With reference to the date upon which concessions were granted to Occidental, was it before or after that date? A. After that date.

"Q. Have you ever met an individual by the name of Omar El Shahli? A. Yes.

"Q. When for the first time did you meet him? A. I met him for the first time in either the latter part of 1965 or the—or 1966. I can't state exactly when.

"Q. Where did you meet him? A. I met him in Europe in I believe it was (651) Frankfort.

"Q. Was this before or after the concessions had been granted? A. I am not sure. I think I met him either just before or just after.

"Q. Now you mentioned earlier that Mr. Fabazi was the Minister of Oil. Of what country was he the Minister of Oil? A. Libya.

"Q. Now was Mr. El Shahli an officer of the Government of Libya? A. No, sir.

"Q. At this meeting at the Claridge on or about September 17, 1964 was there also present a Mr. Assous? A. I don't recall. There may have been.

"Q. Do you recall ever meeting a man by the name of Assous? A. I recall meeting a man who was a friend of Mr. Galic's in Paris. I believe that was his name.

"Q. And when did you meet Mr. Assous? A. My best recollection is that I met him for the first time in 1966 or 1967.

"Q. And whenever you met him, was it after the (652) concessions were granted? A. Yes.

"Q. At any time prior to January 1, 1965 had Occidental submitted a proposal to the Libyan Government for oil concessions? A. Not an official proposal."

I now proceed to page 12.

Mr. Nizer: Just one moment. There is still deemed admitted the next questions up to line 6 or line 4. That is already in. You might as well read it. You want me to read it?

Mr. Greenspoon: Page 10?

Mr. Nizer: Yes. The first four lines, the last line of page 9.

Mr. VanVoorhis: All right.

"Q. Well, had you— A. It had submitted an informal proposal."

Mr. Nizer: Excuse me. In view of the interruption, "it" is Occidental, correct?

Mr. Greenspoon: Correct.

Mr. VanVoorhis:

"Q. And when was the informal proposal submitted? A. I believe it was 1963."

Mr. Nizer: Now would you read 22 to 25 at the
(653) bottom of that [illegible]ease. There is no objection to it.

Mr. VanVoorhis:

"Q. And do you have a copy of that informal proposal which was submitted?"

Mr. Nizer: No, no. Please. At the bottom of page 10, line 22.

Mr. VanVoorhis: All right. The last words there are "I believe it was 1963."

Mr. Nizer: Right.

Mr. VanVoorhis: Then we skip right down to:

"Q. Had the Libyan Government acted on that informal proposal at any time prior to January 1, 1965? A. No."

Off the record.

(Discussion off the record.)

(654) Mr. VanVoorhis: Line 4:

"Q. Did there come a time when a formal proposal was submitted to the Libyan Government? A. Yes.

"Q. And when was that submitted? A. That was submitted in the—some time in the summer of 1965."

Mr. Nizer: In the fall.

The Court: In the fall.

Mr. VanVoorhis: It is corrected, your Honor, to summer.

Mr. Nizer: I didn't know there was a correction.

Mr. VanVoorhis: Obviously it was because it was July 29.

"I believe it was the end of July.

"Q. End of July 1965? A. Yes."

Mr. VanVoorhis: Now we proceed to page 13—the bottom of page 12:

"Q. Was Mr. Brenner during that period of time an officer of Occidental of Libya?"

Mr. Nizer: I beg your pardon. All of 12 is in by consent. The next question is: "Do you have a copy—"

Mr. VanVoorhis: Let me go to page 12.

(655) Mr. Nizer: No, no, it is one more question, "Do you have a copy of that formal proposal—"

"Q. Do you have a copy of that formal proposal which was submitted to the Libyan Government? A. Yes."

Mr. VanVoor is: Now page 12. Mr. Nizer says, "I produce it."

"Copy of letter from Occidental of Libya to the Minister of Petroleum Affairs, Government of Libya, dated July 29, 1965 was marked as Plaintiff's Exhibit 1 for identification." As of that date.

"Q. Dr. Hammer, by whom was Plaintiff's Exhibit 1 signed, and by that I mean the original? A. By me.

"Q. And you are the president and chairman of the board of Occidental of Libya? Is that correct? A. Yes, sir.

"Q. Is Mr. Vaughan an officer of Occidental of Libya? A. Yes, sir.

"Q. Was he at all times in 1964 and 1965? A. Yes.

"Q. Was Mr. Brenner during that period of time an officer of Occidental of Libya? A. No, sir."

* * * *

(657) "Q. Are all of the officers and directors of Occidental of Libya American citizens? A. Yes.

"Q. Are all of the officers and directors of Occidental of Libya employees of Occidental? A. Yes.

"Q. Is Occidental the sole stockholder of Occidental of Libya? A. Yes.

"Q. And was it at all times from the date of Occidental of Libya's incorporation? A. Yes, sir."

Now I proceed to page 16.

Mr. Nizer: No, the next question, "Is there a copy of the submission—"

Mr. Van Voorhis: You are right, Mr. Nizer.

"Q. Now, is there a copy of the submission referred to in Plaintiff's Exhibit 1 extent in Occidental's files? A. Yes, sir."

We now proceed to page 16, lines 2 through 9:

"Q. Now, what numbers had you applied for, and I take (658) it these are bid numbers you are referring to, is that correct? A. Yes.

"Q. What were the numbers contained within your submission? A. I believe we applied for 42A or 42B, I don't recall. 44 and 47."

Now line 15 on the same page:

"Q. Now, of the three bidding blocks for which you applied, how many did you receive? A. We received two.

"Q. They were 52B and 44? A. I believe so.

"Q. Did you ever apply for bidding block No. 39? A. No.

"Q. Did you ever apply for bidding block 32? A. No."

Mr. Greenspoon: 24 and 25.

"Q. Who received bidding block No. 47, if you know? A. I think a company named Wintershal."

We now pass to page 17, line 18:

"Q. Was the proposal submitted with Plaintiff's Exhibit 1 for identification the proposal ultimately accepted by the Libyan Government with respect to 42B and 44? (659) A. Substantially, yes. There came a time when the proposal had to be modified and it was modified to some extent in regard to certain terms and conditions."

On page 18, lines 2 through 5:

"Q. When was the July 29, 1965 proposal modified? A. Some time prior to February 1966.

"Q. What was the nature of the modification? A. As I recall it, it had to do with the amount of taxes to be paid.

"Q. Was that submission in writing? A. Yes.

"Q. Do you have a copy of that modification submission? A. In our files, yes."

I will proceed to page 19 and read pages 19 through 21. I am skipping comment of counsel and colloquy.

Mr. Nizer: That isn't a comment. That's an offer.

I am identifying it.

"Will you please mark as Plaintiff's Exhibit 2 letter from Occidental of Libya, Inc., signed by Armand Hammer, president, to the Ministry of Petroleum Affairs, Kingdom of Libya, dated December 30, 1965."

Mr. Greenspoon: I now offer that as Plaintiff's (660) Exhibit 156.

Mr. Nizer: No objection.

(Plaintiff's Exhibit P-156 was received in evidence.)

"Q. Now, Mr. Hammer, Exhibit 2—" parenthetically, that appears to be the exhibit which was just offered.

The Court: That is Plaintiff's Exhibit P-156 now.

Mr. VanVoorhis: That's right.

"Q. —refers to your letter dated December 27, 1965. Can you tell us what that letter covered? A. That letter was to the effect that we would comply with the change in taxes and that our bid would remain in force."

Mr. Nizer: I think you can read the colloquy because it explains the next offer. I think it is a little clearer, Judge VanVoorhis.

The Court: This is off the record.

(Discussion off the record.)

Mr. Nizer: I think if you read the colloquy of counsel, it is brief.

Mr. VanVoorhis: I think perhaps we can agree on when it needs to be read and when it doesn't. I think it is helpful to read it here.

"Mr. Nizer: I have the letter here if you want it. (661) I will produce it.

"Mr. Greenspoon: All right.

"Mr. Nizer: This is the letter, December 27."

Document handed to Mr. Greenspoon which is marked Exhibit 3 in the EBT for identfication, a letter from Occidental of Libya, Inc., signed by Armand Hammer, president, to the Ministry of Petroleum Affairs, dated December 27, 1965.

Mr. Greenspoon: I now offer in evidence Plaintiff's Exhibit 155 for identification.

Mr. Nizer: No objection.

(Plaintiff's Exhibit P-155 was received in evidence.)

The Court: Plaintiff's Exhibit 3 on the deposition is Plaintiff's Exhibit 155 in this case.

Mr. VanVoorhis: That's right.

"Q. Now, Dr. Hammer, Plaintiff's Exhibit 156 refers to an original concession bid dated July 31, 1965 and plaintiff's Exhibit 155 refers to a submission on July 29, 1965. Will you tell me whether they are referring to two different submissions? A. No, they refer to the same submission.

"Q. Then is the correct date July 29, and the date July 31 an error? (662) A. No.

"Q. Are they both correct? A. I think they are probably dated the 29th and they may have been submitted on the 31st. That would be my—

"Q. The letters refer to them in exactly contrary fashion. It says it is dated July 31 and submitted on July 29. There must be an error in there somewheres. A. I think it is the reverse.

"Q. Now, when for the first time did you learn that a formal proposal for the concessions should be made on or about July 29, 1965? A. I don't remember.

"Q. Was it at least three months prior to that date? A. I would think so.

"Q. Now, did you learn through an invitation to bid issued by the Ministry of Oil? A. Yes, I assume so.

"Q. What is your best recollection on that subject? A. That there was some sort of an invitation to bid.

"Q. Was that a written invitation to bid? A. I am not sure whether it was published in the newspaper or written.

"Q. Well, now, was this invitation to bid limited, do you recall, to firms which had submitted informal (663) proposals prior to the invitation date? A. I don't think so.

"Q. Do you have in our files any writing indicating the date of the invitation bid? A. I believe we do.

"Q. Do you have that with you?

"Mr. Nizer: I know of none, but I will look for it.

"Q. But in any event you believe it was at least three months before the actual date on which you submitted your formal proposal of July 29, 1965? A. Yes."

Now we go to page 25.

Mr. Nizer: No, no, please read on to 22. That is also deemed admitted.

Mr. Greenspoon: Page 22, line 2, to page 24, ne 25 we did not object to.

"Q. Now, in connection with your submission of July 29, 1965, did you learn who else was bidding for concessions? A. When?

"Q. At or about July 31, 1965 when they had the opening? A. Yes.

(664) "Q. Now, do you recall the names of those who bid for those two bidding blocks? A. I don't recall all the names. I know there are several companies that bid for those.

"Q. Was Wintershal one of them? A. I don't recall.

"Q. Were there any of the so-called United States majors bidding for 42B and 44? A. Yes.

"Q. Which one of the majors bid on those two concession blocks? A. I don't know about 44, but I believe 42B was bid for by several of the majors.

"Q. Was Standard Oil of New Jersey one of the bidders? A. I am not sure.

"Q. Is there any document or writing which can refresh your recollection as to the name of the firms which bid on 42B and 44 as announced by the Ministry of Oil? A. I think it was public information.

"Q. Do you have any such writing in your files? A. We may have.

"Q. Would you make a search for that and let us know if you can locate it? A. Yes, sir.

(665) "Q. Now, in your previous informal proposal had you received any particular bidding blocks?"

That was objected to.

"Q. Well, isn't it the fact, Dr. Hammer, that prior to your July 29, 1965 submission you had expressed an in-
157—Eaton 5310 TSK
terest in bidding blocks 32 and 59? A. Interest to whom?
"Q. Interest to the Libyan Government? A. No."

Mr. VanVoorhis: Off the record.
(Discussion off the record.)

"Q. Isn't it the fact that prior to your submission of July 29, 1965 you had never considered applying for bidding blocks 42B and 44? A. No.
"Q. Isn't it the fact that your original notion as it existed prior to August 1964 was to apply for bidding blocks 32 and 59? A. I don't quite understand what you mean by 'notion'.
"Q. That was the original idea that Occidental had."

And then there is no answer.
Mr. Nizer: Read on.

"Q. The idea was to apply for bidding blocks 32 and 59? A. At one time we considered 32 and 59 as potentially (666) desirable bidding blocks.
"Q. And I take it that you dropped the notion then of considering them potentially good bidding blocks? A. That is correct.
"Q. When did you drop that notion? A. Prior to filing our formal bid."

Page 35, 3 through 18:

"Q. Can you fix a closer date to that, Dr. Hammer? A. I think there is a misunderstanding here. 59 was broken up and 42B became part of 59 and about a small part of 44 became—was part of 59.
"Q. In other words, you mean that 59 was broken up and parts of it were distributed to 42B and to 44? A. Yes.
"Q. Is that right? A. Yes.

"Q. Now, sir, when did you commence working on your July 29, 1965 proposal? A. As soon as the request for bids was announced.

"Q. Well, can we fix a date for that? A. It would be, I believe, a few months prior."

Mr. Greenspoon: Lines 19 through 25 we have no objection to.

"Q. Isn't it the fact that you learned some time in (667) 1964 that the Libyan Government was going to ask for competitive bids rather than to award concessions on a negotiated basis? A. No.

"Q. Well, was it at any time your understanding that the Libyan Government was going to consider awarding concessions on the basis of negotiations? A. No.

"Q. Were you so told that some time in 1964 around August? A. No.

"Q. Now, at the time that you commenced the preparation of your July 29, 1965 proposal which was probably around March or April 1965, is that correct? A. I think it was two or three months prior to the submission of bids.

"Q. Now, at that time you had a contract, did you not, with Ferdinand Galic in connection with your Libyan proposals? A. We had an understanding that if certain things happened it would be a contract.

"Q. Was this a written understanding? A. Yes."

Mr. Nizer: The last line on that page, the same page, 26.

(668) Mr. Greenspoon: We didn't accept that.

Mr. Nizer: Yes, we did. You accepted from line 25 on page 26 to the third line on 27.

Mr. Greenspoon: We certainly did not. You didn't offer anything on page 26, Mr. Nizer.

Mr. Nizer: Yes, we did.

Mr. Greenspoon: No, you offered page 25, line 19 through 25, and then you jumped to 27.

Mr. Nizer: Just a moment.

We have some confusion on the numbers. May I ask to save time if I offer now you would object, just these lines, line 25 on page 26 through 28?

Mr. VanVoorhis: What do you want, Mr. Nizer, what page and lines?

Mr. Greenspoon: We will accept the first three words of the answer, but we will not accept his legal conclusion which follows "That is correct."

Mr. Nizer: It is not a legal conclusion. He is telling you what it says.

Mr. Greenspoon: Is that so? We object to everything after the words "That is correct."

Mr. Nizer: Why don't we read it then and let His Honor rule.

"Q. At the time you commenced working on your (669) proposal, you and Allen & Company were signatories to a document dated December 17, 1964, isn't that correct? A. That is correct."

Mr. Greenspoon: Wait a minute. We object to it.

The Court: You have to read the balance of it and then make a motion to strike.

"A. It was an understanding if certain things happened it would be a contract."

Mr. VanVoorhis: We move to strike out that last sentence.

The Court: Wasn't Mr. Allen permitted to give his understanding?

Mr. Greenspoon: I didn't ask for his understanding. I asked him if he was a signatory to a document dated December 17. That's all I asked him.

The Court: Mr. Greenspoon, I think you misunderstood what I just said or you didn't hear me.

Mr. Greenspoon: I am sorry.

The Court: Read what I said, please, so there won't be any question about it.

(The record was read.)

The Court: Did you question him about that?

Mr. Greenspoon: His understanding?

The Court: Didn't you question Mr. Allen about (670) that precisely?

Mr. Greenspoon: Mr. Allen? Oh, I read some questions which Mr. Nizer had asked Mr. Allen which explained other answers given by Mr. Allen to questions—

The Court: And related exactly to this very document, to use the word advisedly,—

Mr. Greenspoon: But it was not responsive.

The Court: —dated December 17, 1964.

We will take the answer in the light of the testimony already given by Mr. Allen on the subject.

Mr. VanVoorhis: Very well.

Mr. Nizer: The next question, too. It goes on to line 8.

The Court: Of course, that doesn't mean that it is being construed that way, you understand. I thought that was clear, too, when Mr. Allen testified.

(671) Mr. VanVoorhis: We are not offering the next question and answer.

Mr. Nizer: No, I say I am, and his Honor will rule. It continues—

The Court: It is the same thing, isn't it?

Mr. Nizer: No. It goes on to page 28.

The Court: All right.

Mr. Nizer: I don't mean just the next question.

Mr. VanVoorhis: We will leave that to Mr. Nizer to offer, if he wants to. I have been reading passages offered by Mr. Nizer which we have not objected to. The ones we do object to, I will lease to him to read.

Mr. Nizer:

"Q. It was an understanding that if certain things happened it would then be a contract? A. Yes."

Page 28:

"Q. What were those certain things?"

Mr. VanVoorhis: We object to this.

Mr. Nizer:

"Q. What were those certain things which had to happen? A. Well, first, Mr. Galic had to be responsible for our obtaining Libyan concessions and, secondly, Allen & Company had to make an investment equal to 25 per cent of the total investment and this had to be mutually agreed (672) upon."

Mr. VanVoorhis: Purely argumentative.

Mr. Nizer: I will finish these first, please.

"Q. What had to be mutually agreed upon? A. The terms under—whether or not Allen would make the investment or not. If Allen would not make the investment, there was no agreement."

That is what I offer.

Mr. VanVoorhis: We have stated our objection.

The Court: Proceed, please.

Mr. Nizer: It goes on to page 30, and that is yours.

Mr. VanVoorhis: All right, page 30, lines 9 through 18:

"Q. Can you tell me, Dr. Hammer, what is the relationship between Dr. Galic and Mr. Frottier? A. Mr. Galic at the time the letter of September 18th was written had advised us that Mr.—that he and General DeRovin recommended that we engage Ogbi, Mr. Ogbi, of Ogbi Bros. to assist us in obtaining concessions in Libya"—

Mr. VanVoorhis: Off the record.

(Discussion off the record.)

Mr. Nizer: I offer the balance—

The Court: One at a time.

(673) Mr. VanVoorhis: The last is "concessions in Libya."

Mr. Nizer: I continue the answer, I offer it:

"It later developed on investigating that Mr. Ogbi was not a great industrialist in Libya but just a smalltime businessman and the credit report on him was such that it was obvious that both General DeRovin and Mr. Galic had misinformed us of the standing of Mr. Ogbi and of the possibility of his being of any help to us. Mr. Galic then advised me that he had found another person whom he felt had great knowledge of Libya and how to prepare for obtaining Libyan concessions and that this man, Mr. Frottier, and some associates of his could do a better job than Mr. Ogbi, and he suggested that we make a similar arrangement with Mr. Frottier as the one we had with Mr. Ogbi. It turned out later that Mr. Frottier and Mr. Ogbi both had been misrepresented to us and neither of them were able to be of any assistance to us in obtaining concessions."

Mr. VanVoorhis: I move to strike that out, object to its being received, on the basis that those are merely the self-serving conclusions of the witness and not responsive to the question.

The Court: I agree with you, but since we have (674) not stricken out other matter in the same category, we will receive it. It is perfectly obvious it is a self-serving declaration and the opinion of the witness. What is of course received and really it is in response to the question was:

"Q. Can you tell me, Dr. Hammer, what is the relationship between Dr. Galic and Mr. Frottier?" And I

take it that at least this portion of the answer is in response to the question, and that is beginning at the bottom of page 30, line 25, "Mr. Galic then advised me that he had found another person whom he felt had great knowledge of Libya and how to prepare for obtaining Libyan concessions and that this man, Mr. Frottier, and some associates of his could do a better job than Mr. Ogbi and he suggested we make a similar arrangement with Mr. Frottier as the one we had with Mr. Ogbi."

I think that is clearly responsive to the question and I will accept it on that basis. The rest is recognized as opinion and self-serving declarations.

Mr. VanVoorhis: Page 31, line 12—

The Court: Off the record.

(Discussion off the record.)

Mr. Van Voorhis:

"Q. Well, now, at the time that you executed the letter and sent it to Mr. Frottier did (675) you discharge Ogbi at that point? A. No. Mr. Galic suggested that we still keep the arrangement with Mr. Ogbi in force."

That is all we are offering on that page.

Mr. Nizer: We offered it but you consented, so you might as well read it.

Mr. Greenspoon: We consented to lines 17 to 19 on page 31.

Mr. VanVoorhis:

"Q. Didn't Mr. Galic tell you approximately at that time to get rid of Ogbi? A. No."

Mr. Greenspoon: No, we okayed everything they have offered from line 21, on page 33 to line 8 on page 36.

Mr. VanVoorhis:

"Q. Now, in November"—

The Court: I lost that. Page 33—

Mr. Greenspoon: Line 21, your Honor, page 33, to line 8, page 36, we have no objection.

Mr. VanVoorhis:

"Q. Now, in November, 1964 what other suggestions did Mr. Galic make to you which you complied with? A. He also made the suggestion we keep General DeRovin.

"Q. When did he make that suggestion? A. At the same time.

(676) "Q. In November of 1964? A. Yes.

"Q. Well, did you keep him? A. Yes.

"Q. What prompted Mr. Galic's suggestion to you? Did you suggest that you ought to get rid of General DeRovin at that time? A. No. I suggested that maybe we ought to take a good look at the arrangement with Mr. Ogbi because of the credit report.

"Q. Yes? A. And that since Mr. Ogbi had been built up as a great industrialist, a man of great wealth and a man with considerable experience, business experience, in Libya, and experience in getting concessions, that we ought to take another look at our relationship with Mr. Ogbi and with General DeRovin who introduced Mr. Ogbi to us.

"Q. In other words, it was because of the bad credit report on Ogbi who had been represented by DeRovin that you thought perhaps you ought to take another look at DeRovin's interest in this matter? A. No, I wouldn't characterize it as a bad credit report. I would say it was a report of a man, of a small (677) businessman. There was nothing dishonest about him in the report.

"Q. Well, was it because of this credit report, whatever you want to call it, and the fact that General DeRovin had recommended Ogbi or built him up as a big industrialist that you thought you ought to take a hard look at DeRovin, is that correct? A. That is correct.

Armand Hammer, E.B.T.

"Q. And at that time, in Novemer, 1964, Mr. Galic induced you to keep him on and not take a hard look? A. That is correct.

"Q. Weren't you told that Mr. Ogbi was an influential politician in Libya in 1964? A. We were told that he was or had been a member of parliament or the legislature.

"Q. Weren't you told that he was at that time a candidate for office? A. We were told that he was running for parliament or the legislature. I don't know what they called it.

"Q. Wasn't that the build-up made of Mr. Ogbi rather than that he was a big industrialist? A. No.

"Q. You mean he was built up in both capacities, as a candidate for office and also as a big industrialist? (678) A. Well, the build-up as candidate for office was not, in my opinion, as important a fact as that he was a man of great experience and great business experience in Libya and that he could therefore be of great help to us in getting concessions.

"Q. All right. Well, now, could you tell us what great help you thought Mr. Ogbi could be to you in obtaining concessions in view of the fact that the concessions were to be obtained through competitive bidding? A. Well, one of the most important elements in bidding for the Libyan concessions was to make your bid attractive so that the government would favor you in granting the concessions. There were some of the so-called preferences that every concessionaire had to answer and, depending on how you answered these preferences and what you offered the government in addition, that would largely determine whether the government would favor one bidder against the other. The standard terms of the bids were more or less uniform."

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(679) Mr. VanVoorhis:

"Q. In other words, the amount of royalties you would pay, the amount of money that the (680) government would get, assuming production, were more or less uniform? A. That is correct.

"Q. And it was in the area of preferences, so-called, that the divergence would occur, is that correct? A. That is right.

"Q. And you thought that Mr. Ogbi could help you in figuring out what your answer should be to these preferences, is that correct? A. Yes, and what projects we should offer to undertake, supported by considerable study, research and data to support our offer of projects to help the government in deciding why one concessionaire should be selected in comparison with another.

"Q. Well, now, was there some sort of bid form or submission form in which these preferences were outlined? A. Yes."

Mr. Nizer: Now, on 38, it was I who offered this and it was consented to and I will read it.

The Court: Where is that?

Mr. Nizer: Page 38, line 11.

Mr. Greenspoon: We have no objection to that.

Mr. VanVoorhis:

"Q. Now, in this connection, what could General DeRovin do or what did you expect General (681) DeRovin to do in connection with figuring out your answers to the preferences? A. General DeRovin was built up as a great personality and we were told that he was a man of great stature—

"Mr. Nizer: By whom?

"The Witness: By Mr. Galic.

"A. And we were told that he was a man of great stature, he was a *persona grata* in Libya, he was of noble birth, through his mother he was related to the Radzi-

wills of the Polish royal family and was therefore either related or very close to the Libyan royal family, that he had spent many years in Libya, that he was familiar with Libyan conditions. I believe he was also an engineer. He knew a great deal about Libya and could be of great help to us in working out projects which would be attractive to the Libyan government and it was Mr. DeRovin who introduced us to Mr. Ogbi.

"Q. Now, what did he expect Mr. Galic to do in connection with answering these preferences? A. Well, Galic was the man, the leader of this group. He was the man who brought in DeRovin. DeRovin brought in Ogbi. So they, the whole group, the whole group of these individuals, were, as far as we were concerned, they (682) were all one group.

"Q. So now we have to make it perfectly clear that you expected Galic, DeRovin and Ogbi to help you in answering these matters dealing with preferences and also to help you in figuring out what projects you should undertake or agree to undertake in your submission, is that correct? A. That is largely correct.

"Q. Well, is there anything else you expected of any of these three men in connection with your application for concessions? A. Well, it was important for us also to know what the competition would be. If these men were so prominent in Libya, presumably they would have information as to what we might expect from our competition, which would be very important to us.

"Q. Is there aything else you expected from these gentlemen in connection with your submission? A. I think that is all, principally.

"Q. Is that it? A. They might recommend some geologists who would be able to help us in deciding which of the areas were most desirable, which was a very important consideration.

"Q. Now, in this connection did you think it (683) important or helpful to you that Mr. Ogbi should be elected to the Libyan parliament? A. No.

"Q. Well, in this connection, did you agree to contribute to Mr. Ogbi's campaign fund? A. No.

"Q. Well, did you contribute to Mr. Ogbi's campaign fund? A. No.

"Q. Did Mr. Ogbi ask you to contribute to his campaign fund? A. Mr. Ogbi asked me, or rather Mr. Galic—General DeRovin asked me to make a loan to Mr. Ogbi in the amount of $20,000, which he would give a note. I refused to make such a loan and later Mr. Galic came to me and told me that he had loaned Mr. Ogbi $10,000 and he showed me a note from Mr. Ogbi and he suggested that I loan half of the $10,000 and said that Mr. Ogbi needed this for some short period of time. So I agreed to loan $5,000 of the $10,000.

"Q. Well, did you, that is, you, Dr. Hammer, personally, as opposed to Occidental? A. No, I am not sure whether it was me or Occidental. I think it was Occidental.

(684) "Q. In any event, I take it, then, that Occidental drew the check to Ogbi for $5,000 or did you draw it for Galic for the $5,000? A. I think it was Galic, to reimburse Galic, to the best of my recollection.

"Q. In other words, at the time that you had this talk with Mr. Galic, Mr. Galic had already lent the money, the $10,000, according to Mr. Galic? A. Yes.

"Q. And he showed you a note signed by Ogbi running to Mr. Galic for $10,000, is that right? A. Correct.

"Q. Then at the request of Mr. Galic you picked up half the loan and gave Mr. Galic $5,000, is that correct? A. That's correct.

"Q. Now, did Mr. Galic give you a note for the $5,000? A. I believe he gave me a note of Mr. Ogbi for the $5,000. He had, I believe, two notes, probably $5,000 each, and I think he gave me one of them.

"Q. Were each of the notes payable to Mr. Galic? A. No. I think they were just signed in blank and that, as I recall—

"Q. Do you still have your $5,000 note? (685) A. I am not sure. I think it has been paid back since.

"Q. You mean Mr. Ogbi paid off the $5,000 to you? A. Yes.

"Q. Do you have any correspondence with Mr. Ogbi concerning that $5,000? A. I am not sure.

"Q. Do you have the cancelled check for the $5,000 which you paid to Mr. Galic? A. I am not sure.

"Q. And you are not sure whether or not you still have the Ogbi note for $5,000? A. No, I'm not sure."

* * *

(690) The Court: Supposing Mr. Kabazi should testify, "Yes, I wrote that letter, I dated it that day, I sent it that day," isn't that enough to qualify for admission, leaving aside the question of its materiality and the fact that it contains self-serving statements?

Mr. Nizer: No, I think not, because the entire Kabazi deposition is interrelated with this letter and if it should turn out that this letter was not written, despite what he says, when he says he wrote it, and if your Honor should make such a finding, then all the rest of the deposition would never be admissible because it is intertwined with it and for that reason I thought your Honor had, as I understood it, determined that we would hear the expert witnesses, and you have the report already in evidence, the Judge's appointed designee, Mr. Haring.

(691) The Court: It may be. I think we are really spending a lot of time on something that, in light of the fact this is a non-jury case, is unimportant.

Realistically, if I were trying this case to a jury and Mr. Kabazi was on the witness stand, called by the plaintiff, and asked "Did you write this letter, when was it dated and what did you do with it," and he said "Put it in the mail," and it was offered in evidence, what would be the issue then? At that point the question of whether or not it was a bona fide letter or a spurious letter, he having testified that he wrote it, I would not be passing upon the fact issue as to when he wrote it, whether it was dated that day. That would be for the trier of the fact. I would only determine whether or not it was admissible at that time.

Mr. Nizer: That procedure—

The Court: You see, I have to bear in mind that I am playing two roles here.

Mr. Nizer: Yes, of course.

The Court: And I tried to make it clear that even assuming I admitted it, there still remained the question before me as the fact finder, despite whatever he may testify to, and I am certainly not prejudging it, as to whether or not he did in fact send it at the time he (692) sent it, signed it the day he said he signed it. That would be the ultimate fact to be decided by the fact finder in this case. I think we are confusing this issue.

Mr. Nizer: May I just make one other comment.

The Court: The reason I say we are spending too much time on it, I don't see what difference it would make if we took all the testimony on all aspects of it at one time, and say it went in evidence, then leave it to the fact finder to determine what the ultimate issue is, that is, the ultimate issue to be resolved under your different contentions here.

Plaintiff's contention is it was sent just a few days before February 20th. I think February 16th is the date. Defendant's contention is that this is a contrived setup, that while he may have signed it, I don't think you dispute that he signed it—

Mr. Nizer: No.

The Court: —that it was sent long after the event, and you purport to prove it. That represents a fact issue. That has nothing to do with its admissibility.

Mr. Nizer: I only want to make one brief comment and then I will yield because your Honor's analysis is absolutely right. I haven't any quarrel with that at all on our side.

(693) The point is that it is in your Honor's discretion to take off a witness who offers such a paper where its authenticity is challenged and say "All right, on the *voir dire* I will hear several witnesses with respect to its authenticity," and I thought that is what your Honor had decided. Since you are trying it without a jury, it's rather easy to do that. But I will abide by whatever your Honor thinks.

The Court: Why don't we just go along with it. As I say, it may even be more expeditious, as you just suggest, that we take all the evidence on it, and I could reserve decision until I have heard all the evidence on it and make a determination at that time. It's really six of one and half a dozen of the other.

I do want to say this to you gentlemen. I don't hesitate in saying this. It came up when the letter was referred to initially during the course of this trial. I indicate to you, as I did then, that the mere fact that he said that so and so was done or such action was taken because of so

and so doesn't prove that that is the fact. I think all of you do not recognize that. There must still be a fact determination by the court as to what actually was done.

Mr. Nizer: Right.

(694) Mr. VanVoorhis: We haven't felt that we had reached the point in the trial to argue that.

The Court: We haven't. Actually, there has been no evidence in the case so far on that issue at all.

I think that was one of the reasons right from the very start of the trial I suggested to you that in keeping with my own practice, one that I do not believe is frowned upon by the Court of Appeals in a case of this type, a trial judge sitting without a jury is well advised in the interests of saving time to take almost everything that is offered and then leave it to the court to recognize what is material, what is relevant, and make his disposition accordingly.

* * *

(696) September 17, 1973,
11:30 A.M.

The Court: Are we ready to proceed?

Mr. VanVoorhis: Page 44—

The Court: What deposition is this?

Mr. VanVoorhis: Dr. Hammer's deposition, continuing from where we left off last Thursday, page 44, if your Honor please.

"Q. Well, now"—

This is offered, by the way, by Occidental, and not objected to by Plaintiff.

"Q. Well, now, at any time prior to July 29, 1965 did Messrs. Galic or DeRovin or Ogbi advise you of what

your competition would or might be? A. Mr. Ogbi may have. I don't recall.

"Q. Did you receive any writing from Mr. Ogbi, from Mr. Galic or from Mr. DeRovin concerning that subject? A. I don't remember receiving any.

"Q. Did they tell you how they would go about determining who your competition would be inasmuch as the proposals were confidential? (697) A. No.

"Q. Did you expect them to have some kind of access to government officials from whom they could acquire this information? A. No. Was in Libya, especially in Tripoli, a lot of scuttlebutt going about. I would think anybody as well connected as Mr. Ogbi was represented to be, and as General DeRovin was represented to be, would have information which might be valuable.

"Q. Was there any mention made at any time prior to the granting of the concessions in February, 1966, that Mr. Galic was a friend of Fuad Kabazi? A. No.

"Q. All right. Now, during this period I take it, March or April, 1965 to July 29, 1965, the Occidental people were busy preparing their proposals, is that correct? A. Yes.

"Q. And in that connection"—this is read now by plaintiff—

"Q. And in that connection did you at any time inform Allen & Company of the nature of your proposal or any details whatsoever concerning it? A. I don't remember.

"Q. During that period of time did you write any (698) letter to Allen & Company in which you stated in any way what the subject matter of your proposal was going to be or any details of it at all A. I don't recall any.

"Q. Is it your best recollection that no such letter was written by you to Allen & Company during that period of time concerning your proposal? A. I don't recall.

"Q. I am sorry— A. I don't recall any."

Now we skip to page 47, line 8, plaintiff reading:

"Q. Now, sir, did anyone to your knowledge in Occidental contact Allen & Company during that period of time, from March or April, 1965, to July 29, 1965, concerning the terms and details of the proposal that you were then working on? A. I don't recall anybody.

"Q. Did you orally communicate on that subject matter to anyone from Allen & Company during that period of time? A. I don't recall any.

"Q. Is it your best recollection that you did not so orally communicate to Allen & Company during that period of time? A. I don't recollect at the present time.

(699) "Q. Well, now, did you at any time prior to July 29, 1965, designate anyone on your staff, Occidental's staff, to deal with Allen & Company in connection with Libyan concessions? A. No.

"Q. And whatever dealings were had as between Occidental and Allen & Company were carried on by you, Dr. Hammer, and not by any of your subordinates, is that correct? A. That is correct.

"Q. Did you at any time submit any drafts of your proposal to Allen & Company? A. No."

The defendant offers the following without objection—no, with objection. We do object. Would you care to read that, Mr. Nizer?

Mr. Nizer: There is no objection to the first:

"Q. Did you submit your final proposal with respect to Libyan concessions to Allen & Company"—

Mr. VanVoorhis: There is no objection thus far.

Mr. Nizer: That's right.

Mr. VanVoorhis:

"A. No."

Mr. Nizer: Wait.

"Q. Did you submit your final proposal with respect to Libyan concessions to Allen & Company at any time prior to July 29, 1965?"

(700) Mr. Van Voorhis: We don't object to the answer, "No." We do object to the self-serving declaration and conclusion which follows.

Mr. Nizer: I think that in light of the way we have been dealing with this, the explanation is part of the answer and is essential to it. May I read it, your Honor, before your Honor rules on it?

"A. No, I didn't feel it was necessary because back in March of 1965 I received a letter from Herbert Allen in which he enclosed a report which I had just received on General DeRovin which was so shocking that my confidence was shaken in this whole group and I felt that it was necessary to protect our interests in Libya in view of the fact that I felt this group could not be of any help to us in getting concessions and might very well be very damaging."

Mr. VanVoorhis: We object. That is not responsive and is conclusory and self-serving.

The Court: I think obviously that it is self-serving, at least the latter part of it is, beginning with "It was so shocking."

We will take it on the same theory we have taken everything else. I think the answer to that, so there won't be any mystery about it, is, "No, I didn't feel it was necessary because back in March of 1965 I had received a letter (701) from Herbert Allen in which he enclosed a report which he had just received on General DeRovin."

Again, realistically, the letter is in evidence which he wrote right at that time. So we ought not to spend too much time on it.

Incidentally, Mr. Nizer asked a question at page 48. Why was the date July 29th used in these questions? Was there any special reason?

Mr. VanVoorhis: Yes. That was the last day for filing applications.

The Court: Oh, that's right. July 16th was the date of the so-called termination letter and the July 29th date.

Mr. VanVoorhis: That's right.

(Pause)

(702) Mr. VanVoorhis: I will continue the part which is offered by defendant, but which we don't object to.

"Q. Well, in short, is it the fact then that you did not submit your final proposal with respect to Libyan oil concessions to Allen & Company at any time prior to July 29, 1965? A. Yes, sir.

"Q. Did you submit that final proposal or any copy thereof to Allen & Company at any time since July 29, 1965? A. No."

Mr. VanVoorhis: Now we do object to the—

Mr. Nizer: "No, I didn't because we had terminated our relationship with Allen on July 16, 1965."

Mr. VanVoorhis: We object on the same ground as before.

The Court: I will take the answer "No, I didn't, because I had sent the letter, Allen & Company the letter dated July 16, 1965.

Mr. VanVoorhis: Now the plaintiff continues.

"Q. Irrespective of the reason thereof, is your answer no, you did not submit the proposal to Allen & Company subsequent to July 29, 1965? A. Yes.

(703) "Q. Do you agree? A. Yes, sir."

Mr. VanVoorhis: This is offered next by defendant without objection.

"Q. You mentioned that you received a letter from Herbert Allen containing an enclosure concerning General DeRovin," I guess. A. Yes, sir.

"Q. And when did you receive that? A. That was in the middle of March.
"Q. 1965? A. Yes."

Now we go over to Page 53, Line 19, Line 20, which is offered by defendant, but without objection from plaintiff.

"Q. Do you know who Mr. Marvyn Carton is? A. Yes.
"Q. Do you know who he was in March of 1965? A. Yes."

And then the plaintiff continues reading:

"Q. Did you write to Mr. Carton concerning Defendant's Exhibits 24, 24A and 24B?"

Now, just a moment, do we have the corresponding (704) references to the exhibits in this case? I guess we will have to hook that in later. Those are the numbers given to them in the deposition.

Mr. Greenspoon: Just one second, I will give it to you.

Mr. VanVoorhis: While Mr. Greenspoon is looking for that we can continue.

"A. No." And the plaintiff reads:

"Q. Did you at any time between March 16, 1965 and July 29, 1965, talk to Mr. Carton about Defendant's Exhibits 24, 24A and 24B?"

Mr. Nizer: Isn't it July 15?

"Q. March 16 and July 29 is the question."

Mr. Nizer: It says 15 on my copy.

Mr. VanVoorhis: It is the next question.

"A. No.
"Q. Did you at any time between March 16 and July 15, 1965, talk to Mr. Charles Allen, Jr. about Defendant's Exhibits 24, 24A and 24B? A. No."

Mr. Greenspoon: Your Honor, that 24, 24A and B, collectively are in evidence as Plaintiff's Exhibit 97, a single exhibit.

(705) Mr. Nizer: Is that the DeRovin report?

Mr. Greenspoon: And the covering letter.

Mr. Nizer: It is the DeRovin report and the covering letter, your Honor.

The Court: What exhibit?

Mr. Greenspoon: 97, your Honor.

"A. No.

"Q. Did you at any time during that period of time talk to Mr. Herbert Allen about Defendant's Exhibits 24, 24A and 24B? A. I don't recall.

"Q. Well, is it your best recollection that you did not or that you did? A. I have no present recollection."

The defendant offers Line 23 without objection.

"Q. Incidentally, who is or was Mr. Marvyn Carton? A. Mr. Marvyn Carton was, I believe, a partner of Allen & Company, of Herbert Allen—

"Q. In New York? A. —Charles Allen—yes.

"Q. Do you know who Klehe & Company are? A. Yes.

"Q. Who are they? A. They were the London office of that—or London— (706) I mean of Paris company, French company, in which Allen & Company had a substantial interest."

Now we skip to 56, Line—

The Court: 55, to Line 11, is that right?

Mr. VanVoorhis: Yes, that's right. 56. Line 4, the defendant offering but without objection.

"Q. At any time between March 16, 1965, and July 16, 1965, did you discuss Defendant's Exhibits 24, 24A and 24B with Mr. Galic? A. Repeat the dates.

"(A portion of the record was read by the reporter.)

"A. Yes.

"Q. When did that discussion take place? A. It took place in London.

"Q. That was where, and that was when? A. It took place in London at the Claridge Hotel.

"Q. Yes, when? A. Oh, I can't tell you exactly when.

"Q. Well, was it in March or April or May or June of 1965? A. I can't tell you exactly. I think it was—there was a telephone conversation with him in—shortly after (707) I read this shocking report about this friend General DeRovin and I remember telling Mr. Galic that Mr. DeRovin had been represented to us as a man of great stature and he turned out to be an international crook and swindler and bankrupt man, and had been in prison several times sought after by the police, and Mr. Galic disowned responsibility for Mr.—for General DeRovin and said that he too had been taken in, so to speak.

"Q. This had been a telephone conversation? A. And followed up by a meeting in London at Claridge's.

"Q. Let's take one at a time. Who called whom in that telephone conversation? Did you call Galic or did he call you? A. I don't recollect.

"Q. Well, in any event, where were you at the time of the telephone conversation? A. I believe I was in Los Angeles or New York.

"Q. And where was Galic, so far as you know? A. So far as I know, he was in Paris.

"Q. And you believe that this telephone conversation took place shortly after? A. It might have been in Italy, I don't know. He (708) travels around so much, I don't know where he called from.

"Q. But, in any event, this telephone conversation took place shortly after you received Defendant's Exhibits 24, 24A and 24B for identification; is that correct? A. Yes.

"Q. And in this conversation you say that Galic disclaimed any knowledge of DeRovin's prior experience, and said that he too was taken in. Is that correct? A. Yes.

"Q. Did you and Galic have any discussion as to what you ought to do about DeRovin in that telephone conversation? A. Galic suggested that we cancel the arrangements with Ogbi.

"Q. With Ogbi? A. Yes, because he said that in view of the fact that DeRovin had been the one who had recommended Ogbi that we should cancel with Ogbi."

Now the plaintiff reading:

"Q. Well, by the way, did you have at that time some sort of a written arrangement with DeRovin? A. Yes."

We skip to Page 59 at Line 9 offered by plaintiff.

(709) "Q. At that time you say you also had a written arrangement with Mr. Ogbi? A. Yes."

Now on Page 60, Line 3, defendant offers but without objection.

"Q. Dr. Hammer, did Galic know about your arrangement with Mr. Ogbi? A. Yes. He was there when the arrangement was made.

"Q. And when you talked on the telephone with Galic he suggested that you should cancel the arrangement with Ogbi, is that correct? A. Yes.

"Q. Did Galic also know about the arrangement with DeRovin? A. Yes.

"Q. What did he suggest, if anything, should be done about that arrangement? A. Well, just disregard it completely.

"Q. You mean just pay no attention to it at all? A. That is right.

"Q. What did you say to all this? A. Well, I said that I was very much disappointed and disillusioned in the people that had been built up to me as being people of great standing and great integrity.

(710) "I had relied on the Allens, that the Allens had told me that I could rely on everything that Galic said, and that Galic had recommended DeRovin, DeRovin had recommended Ogbi, and it was not apparent that from the letter that Allen had sent me that DeRovin was a crook, and international swindler, and that previous information we had about Ogbi that he was a small-time businessman, all of which had—was disturing to me.

"He then suggested that he had another—other people that he thought had a lot of experience in Libya and that they would be better for me than either Ogbi or Frottier or DeRovin.

"And Frottier—I believe by that time we had also learned that Frottier was hot air too.

"The whole thing looked like a big promotional swindle and everybody in it was engaged in a lot of hot air, so I decided then that we had to be careful to see that these people did no harm to us in Libya, and although I had made up my mind to terminate then immediately with Galic and Allen and the whole group, I felt was better to wait until such time as we were sure that they could not harm us in Libya.

"So I waited until some time later and then (711-712) made my move and served notice on all of them."

The plaintiff continues reading:

"Q. Are you relating to us, with the exception of that later part where you said you made up your mind but that you didn't want to do anything, a conversation that you had had with Galic on the telephone? A. No. The conversation with Galic on the telephone was simply my astonishment and displeasure and my reaction to the

report about DeRovin and his remark that we should terminate our relations with Ogbi and that we should meet some new friends of his who had lived in Libya and had great experience and—in getting concessions and could be helpful in advising us how to go about getting these concessions.

"Q. Was there any discussion in this telephone conversation about having a meeting with Galic in London? A. Yes.

"Q. In other words, you didn't say to Galic that—in that telephone conversation—that you fired DeRovin and Ogbi is fired and Allen is fired. You didn't say that, did you? A. No, certainly I didn't want to risk having them hurt me in Libya, because at that time I felt I was in the (713) hands of pretty shady group of people.

"Q. Well, in any event, the upshot of the telephone conversation was that there was an agreement for you and Galic to meet in London, is that right? A. At some future date. Now, it may not have been exactly after the telephone conversation, it might have been at my next trip to London, which may have been a month or two later."

Plaintiff continues reading:

"Q. Right. And in any event no other decision was agreed to in that telephone conversation, other than to meet in London later? A. That is right.

"Q. There was no decision agreed to, to terminate Ogbi in that telephone conversation? A. No.

"Q. And there was no decision agreed to, to terminate Allen & Company in that telephone conversation? A. No.

"Q. Or DeRovin or even Galic? A. Well, regarding Allen, I did not feel—I felt if I told Allen they would immediately tell Galic, and then Galic would, and his group, would retaliate and would try to block us in

Libya, and, as a matter of fact, (714) my fears I think were well-grounded, judging from the testimony that I listened to—letter produced by Galic to Charles Allen, where he did exactly, or tried to do it at a later date, what I was afraid he would do.

"Q. In any event, did you report to anyone from Allen & Company this telephone conversation, or the substance of it, that you had with Galic? A. I certainly would not in the light of what I just stated.

"Q. Is the answer not that you would not but that you did not? Is that correct? A. I did not, definitely.

"Q. Did you advise anyone in Allen & Company that you were going to meet with Galic in London in the future on the subject matter? A. I don't recall.

"Q. Did you advise anyone in Allen & Company that you had made a written arrangement with DeRovin? A. Well, I assume Mr. Galic was keeping Allen & Company fully informed.

"Q. I know that was the assumption, but did you do it? A. No.

(715) "Q. Did you advise Allen & Company—

"Mr. Nizer: Are you sure?

"A. I might have done it, but I am not sure. I have no recollection at this time.

"Q. You mean that Mr. Nizer's statement to you may have sparked your recollection? Is that what you mean? A. It may have sparked the fact that I might have done it and that I have no recollection of it.

"Q. Well, in any event, did you ever send to Allen & Company a copy of your arrangements with DeRovin, Ogbi or Galic? A. Well, Mr. Herbert Allen was in London at that time, and I assume that he was informed of all this from Mr. Galic.

"Q. I know, but did you ever do it? A. No.

"Q. So I take it that your best recollection is that you never informed anyone in Allen & Company about your ararngement with DeRovin or Ogbi? A. Not to the best of my recollection. I believe I relied on Galic.

"Q. And you relied on Galic? A. Yes."

(716) Defendant offers this but without objection—yes, we do object.

Line 18, Page 65.

Mr. Nizer: Do you want me to read that?

Mr. VanVoorhis: Yes, if you will.

Mr. Nizer: All right.

"Q. And you considered that Allen & Company was responsible for DeRovin's bad conduct and bringing DeRovin into the picture. Is that what you are telling us? A. I believe that Allen & Company was responsible for bringing Galic into the picture. Allen & Company told me I could rely on Galic. I did rely on Galic. Galic brought in DeRovin. DeRovin turned out to be a crook and swindler, and DeRovin and Galic, as far as I was concerned, were the people I had met and was told to rely upon by Allen & Company."

Mr. VanVoorhis: This is objected to on the same grounds as I objected previously, not responsive and specifically self-serving and conclusory, argumentative.

Mr. Nizer: I think this is responsive, your Honor, to the question put by Mr. Greenspoon.

The Court: Well, the question is broad enough to allow it. I will allow it.

(717) Mr. VanVoorhis: Now we skip over to Page 67, Line 18, plaintiff reading:

"Q. Didn't you have an agent by the name of Brenner in Paris at that time? A. Yes.

"Q. And Mr. Brenner was a man who had been with you for some time? A. Yes."

Now the defendant offers but without objection.

"Q. Did you ask Mr. Brenner to check into the information set forth? A. I didn't say ten years.

"Q. Let's call it eight years, five years. You had faith and confidence in Mr. Brenner? A. Yes. It was a few years.

"Q. Did you ask Mr. Brenner to check into the information set forth in Exhibits 24A and 24B? A. No. I relied on the Allen & Company letter.

"Q. Did you call up General DeRovin and tell him that you had received this information about him? A. No. It was too shocking and—to do any such thing. It was too detailed and with dates and names. It was so authoritative. It even gave all his aliases. It gave (718) the dates when he was in prison. It gave the numerous occasions on which he was arrested. It told about him being a Gestapo agent.

"It told about him being prosecuted for embezzlement, forgery, and that he wasn't even an officer, he wasn't even a general. He was a fake general, that he had worn a uniform which he wasn't entitled to wear. That he had escaped from prison, and it gave the date on which he escaped from prison.

"I can't possibly believe that Klehe & Company, as responsible as they are, they are private bankers, and they are—Allen & Company owns a substantial stock interest in Klehe & Company. They are their authorized agents.

"Mr. Klehe is one of the leading citizens of Paris, a man with great connections.

"Mr. Torem, whom they mention here, is their attorney in Paris.

"They even refer to a telegram sent to Mr. Torem a copy of which was sent to Marvyn Carton, and while the telegram was not enclosed, I took it for granted that the

telegram must have severed all their relations with General DeRovin.

"Well, after getting this kind of a report from (719) Herbert Allen, I certainly didn't feel it was necessary for me to do any more investigation."

> Mr. Greenspoon: Your Honor, I might advise you that that telegram which is referred to there I believe is now in evidence as Plaintiff's Exhibit 97A.
>
> The Court: Now, who is Richalco referred to in the telegram?
>
> Mr. Greenspoon: I think, your Honor, that that is the cable name of Richard Klehe & Company or Klehe & Company, whatever his proper name is.

* * *

(720) "Q. Can we sum it up that neither you nor Occidental nor anyone acting on your behalf investigated any of the information set forth in Defendant's Exhibits 24A and 24B?"

* * *

(721) "A. At that time we made no investigation.

"Q. Did there come a time when you did make an investigation," this is page 71, line 3. "A. Oh, some later date we made an investigation and found that the report had omitted a lot, that it wasn't even half as bad as what it should have been.

"Q. When did you make that investigation? A. I don't remember, but—

"Q. Was it after the concessions were granted? A. Yes.

"Q. Some time in 1967, after this lawsuit was commenced? A. I don't remember when it was. I think it may have been before then.

"Q. Before what? A. Before 1967.

"Q. Certainly it was after the concessions were granted; is that right? A. Yes."

The Court: You went down to line 20, is that right?

Mr. VanVoorhis: That's right, line 20, page 71.

Now, page 72, line 7, offered by defendant. I guess we better begin at line 3?

(722) Mr. Nizer: No, at line 8.

Mr. VanVoorhis: "Q. Who did the investigating for you? A. A law firm in Paris."

Now the plaintiff continues reading:

"Q. Have you at any time prior to the commencement of this lawsuit asked DeRovin whether the information set forth in Defendant's Exhibits 24A and 24B is accurate? A. No. I have never had any conversation with Mr. DeRovin—

"Q. Now— A. —since then.

"Q. Now, as I understand it, by the time of your telephone conversation with Mr. Galic, after the receipt of Defendant's Exhibits 24A and 24B, you had made up your mind to terminate Galic, DeRovin, Ogbi and Allen & Company, but that you did not tell that to Galic in the telephone conversation; is that correct? Did you tell that to Allen in a telephone conversation? A. I did not, for the reasons I stated before.

"Q. When was this meeting held in London as between you and Galic, following this telephone conversation? A. I believe it was in June.

"Q. Of 1965? (723) A. Yes.

"Q. And who was present at that meeting? A. Mr. Galic and I, and Mr. Ogbi arrived from Tripoli.

"Q. And where was it held? A. At the Claridge's Hotel.

"Q. All right. And did you have separate meetings with Galic and Ogbi or was there a single meeting with

all three of you present? A. I think I had a meeting with Mr. Galic first, and then we met with Mr. Ogbi."

Continuing, offered by defendant, but without objection, line 17.

"Q. All right.

"Will you tell us what the conversation was as between you and Galic, before you met with Ogbi? A. Mr. Galic was very apologetic for the way things had proceeded. He insisted that he didn't know about DeRovin's background.

"He said that he was sorry that nothing had come of the introduction to Mr. Froterier, and he wanted me to let him introduce me to some other people who he felt that could have been of help to me in the place of Ogbi and Froterier.

(724) "Q. What did you say to that? A. I said I would take it under consideration.

"Q. Did he name the names of the persons he wished to introduce you to? A. I don't recall."

Defendant offers, but with no objection:

"Q. Was one of the names Fuad Kabazi? A. No.

"Q. You are sure of that? A. Absolutely."

And now offered by plaintiff, beginning line 15:

"Q. You do not recall the names, but you definitely recall that one of them was not Fuad Kabazi? A. No. Mr. Kabazi was a government official and he was Petroleum Minister.

"Q. Wouldn't have he been a helpful person to have known? A. It depends on what you mean by known.

"Q. Well, to have him favor your proposal? A. Well, I don't think, sealed bidding, that that would be very helpful."

Now, passing to page 75, line 15:

"Q. Can you probe your recollection, Mr. Hammer, and see if you can recall the names which Galic mentioned (725) in that conversation? A. No, I didn't pay too much attention, because I had already made up my mind that I would sever relations with all of the group, including Galic, Allen and DeRovin, et cetera, et cetera.

"Q. Is that it? A. Yes.

"Q. What else was said in this conversation as between you and Galic, before Ogbi joined it? A. I don't recall anything else.

"Q. And you left that conversation you were going to reserve decision as to Galic; is that right? A. Yes. I didn't want to cut him off immediately for the reasons I mentioned before.

"Q. You didn't want to call Galic off immediately? A. That is correct.

"Nizer: For the reasons he mentioned before.

"Q. And now we are in June of 1965; is that correct? A. That is correct.

"Q. And by the same token you didn't want to cut Allen & Company off for the reasons you have previously mentioned at that point? A. That is right.

"Q. Is that right? (726) A. For fear that they would tell Galic my intention to cut him off. I did not communicate with Allen either.

"Q. No, but I am saying that you did not tell Galic at that meeting that you intended to cut Allen & Company off also? A. That is right."

That is line 24, page 76.

Now, page 77, line 3—

Mr. Nizer: You omitted line 25.

Mr. VanVoorhis: Yes, that's right.

"Q. And this meeting is now June of 1965? A. That is correct."

Now, continuing, defendant offers without objection line 3, page 77:

"Q. Can we fix it a little closer to a precise date than merely June of 1965? A. I don't know. I think it is some time during the month."

Now we pass to page 79, line 2, defendant offering, without objection:

"Q. Now, I take it then you had a meeting with Gatic and Ogbi? A. Yes.

"Q. And that was on the same day or a later day? (727) A. I am not sure.

"Q. Well, was it— A. Probably the same day.

"Q. At least within a day or two at the latest? A. Yes.

"Q. And that took place at the Claridge Hotel? A. Yes.

"Q. Now, what was said on this occasion? A. Well, I told Mr. Ogbi that I showed him the report on—that I had on General DeRovin.

"Q. You showed it to— A. Yes. And I asked him that in view of that how could he substantiate this statement he had made that DeRovin was *persona grata* in Libya."

* * *

Mr. VanVoorhis: "And he had no explanation for that, that—that was satisfactory to me. I don't recall what he said, but I said that in view of that, we were decided that our agreement—agreement with him should be terminated. And he offered no objection to that."

The plaintiff continues at line 3, page 80.

(728) "Q. Is that the total conversation? A. In substance, yes.

"Q. And you say that Galic was present at this conversation? A. He was present. He may not have been present for all of it, but he was present, I think for—at the time when I told Ogbi that we were terminating our contract with him."

Defendants offer but without objection:

* * *

"Q. Does the date on Plaintiff's Exhibit 8," now P122, "refresh your recollection as to the date of the (729) meeting with Galic and with Galic and Ogbi? A. Yes.

"Q. Would you say that Plaintiff's Exhibit 8," now P122, "was drafted and signed on the date that you had the meeting with Ogbi? A. Yes.

"Q. Who was the author of Plaintiff's Exhibit 8?"

Now P122.

"A. I was.

"Q. And Mr. Ogbi simply signed it upon your request? A. That's right.

"Q. No money changed hands? A. None whatsoever.

"Q. Now, what was the agreement of February 18, 1965, between Occidental and Ogbi?

"Nizer: September, you say?

"Q. February 18th. A. I don't recall.

"Q. Was there such an agreement? A. There may have been, yes.

"Q. Wasn't it under that agreement that you paid Mr. Ogbi money to agree to Plaintiff's Exhibit 8?"

Now P122.

"A. No. Could not very well be, if that came before—(730) June 19th.

"Q. Now, can you explain to us why you first inserted the words 'February 18, 1965' and then struck them through? A. I don't recall at this time.

"Q. Well, you were the author of the words, including those stricken, were you not? A. Yes. It may be that Mr. Ogbi was doing some clerical work for us. He was helping with getting registrations, things of that kind, and I have always felt that Mr. Ogbi was an honest man that he—I never placed him in the same category that I placed DeRovin or Galic. So I—it may be that that is what that refers to."

* * *

(731) "Q. Well, do you have a copy of an agreement dated February 18, 1965, between Occidental and Ogbi? A. I would have to—I'd have to look and see.

"Q. But, in any event, was it your intent that any such agreement, if it existed, would survive the execution of Plaintiff's Exhibit 8?"

Now P122.

"A. I would think so. I am not sure of it. It would be to the best of my recollection.

"Q. Now, did Occidental pay to Mr. Ogbi or on behalf of Mr. Ogbi any moneys in consideration of the execution of Plaintiff's Exhibit 8?"

Now P122.

"A. No.

"Q. Didn't you cancel the note of $5,000? A. No.

"Q. You mean Mr. Ogbi paid it? A. Yes.

(732) "Q. Subsequent to that date? A. Yes.

"Q. Or before that date? A. Subsequent to that date.

"Q. Now, as I understand it, after your meeting with Ogbi and Galic, you have now terminated with Ogbi; is that correct? A. Yes.

"Q. But you have not yet terminated with Galic or DeRovin, is that correct? A. That is correct.

"Q. And you have not, as yet, advised Galic or DeRovin that you intend to terminate with them; is that correct? A. That is correct.

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"Q. And you have not yet advised Allen that you intend to terminate with them, is that right? A. That is correct.

"Q. Did you, after your conversation with Ogbi, call Allen & Company and tell Allen that you had terminated with Ogbi? A. No.

"Q. Well, now— A. I relied on Galic doing that.

(733) "Q. Well, prior to June 19, 1965, had not Occidental incurred expenses in connection with this attempt to obtain concessions in Libya? A. Yes.

"Q. And these were entered on the books and records of Occidental, as applicable to Libyan concessions; is that correct? A. Yes.

"Q. And Mr. Allen had told you that whenever you are ready he will pay his 25 per cent share; isn't that so? A. No.

"Q. He hadn't told you that? A. It was subject to Galic performing under his contract, and it was until that time each party was to pay his own expenses.

"Q. Was there some writing setting forth that understanding? A. Yes.

* * *

(734) "Q. Would you read the language into the record from Exhibit 17 which you say? A. Yes.

"With regard to Ferdinand Galic's expenses as we are paying our own expenses, including the cost of our Paris representative, Mr. Theodore Brenner, and our geologist, Mr. Richard Vaughan, and others, I think Mr. Galic should pay his own until such time as we know whether he is going to deliver or not. This was an answer to Mr. Herbert's letter of December 9th.

"Nizer: Herbert Allen.

"A. —letter of December 9th, in which he said that he would be willing to pay 25 per cent of the expenses whenever they are presented and will mutually, with your good self, approve or disapprove of the various items."

Now, we pass from there, which is line 4, page 86, to page 90, line 5. This is offered by defendant but without objection:

"Q. Now, in connection with your submission of the July 29, 1965, bid, were you required to submit any financial data? A. Yes.

"Q. And were you asked as part of the submission to (735) supply such data as the Libyan government would request in connection with your financial ability to undertake the exploitation of the concessions, if granted? A. Yes.

"Q. And in that connection, were you requested to advise the Libyan government of your banking connections and facilities? A. Yes.

"Q. And in that connection did you utilize the name of Allen & Company? A. No. Specifically not. We used the name of Chase Manhattan Bank.

"Q. Is it your testimony then that at no time in connection with your submission did you utilize the name of Allen & Company? A. No, as a matter of fact, we obtained a letter from the Chase Manhattan Bank, just prior to the time we terminated with Allen.

"We did that—one of the reasons—to make sure that we would not have—there would be no question of our being able to stand on our own legs as far as our financial ability was concerned.

"Q. Did you obtain that letter from the Chase Manhattan Bank in July of 1965? (736) A. Yes."

Now we pass over from there, line 10, page 91, to page 92, line 13, again offered by defendant but without objection:

"Q. Now, in connection with your submission to the Libyan government, were you required to advise them of where you would obtain needed financing to exploit the concessions? A. Nothing beyond what is contained in the letter of Chase Manhattan Bank.

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"Q. Did you suggest in anywise to the Libyan government where you would obtain additional moneys if necessary, to exploit the concessions? A. Well, I think that with a net worth of $47 million it was unnecessary to expand beyond that.

"Q. In other words, you mean that the Libyan government did not ask you for any additional— A. No.

"Q. —financial support— A. That's right.

"Q. —from any bank or bankers? A. That's right.

"Q. Is that right? A. That's right.

"Q. Did you write a letter to Chase Bank asking (737) them to prepare and sign this letter, Plaintiff's Exhibit 9?"

Mr. Greenspoon: That, your Honor, is now 123 in evidence, Plaintiff's Exhibit 9.

Mr. VanVoorhis: Is that the letter of July 15th?

Mr. Greenspoon: Yes, signed by Mr. Broadus, B-r-o-a-d-u-s. That is now Plaintiff's Exhibit 123.

Mr. VanVoorhis: "A. To the best of my recollection, I telephoned the Chase Bank and asked them to supply that information to the Libyan government.

"Q. And I take it that Chase Manhattan Bank is one of the depositories of Occidental? A. Yes."

The plaintiff continues reading.

"Q. And did you tell Chase at the time of your conversation preceding Plaintiff's Exhibit 9," now P123, "of your relationship, if any, with Allen & Company? A. No.

"Q. Did you discuss with Chase the letter dated December 17, 1964, signed by Occidental and by Allen & Company? A. No.

(738) "Q. Did you in anywise advise Chase that you had had discussions with Allen & Company concerning Libyan oil concessions? A. No.

"Q. So so far as you know, Chase was completely ignorant of any pre-existing relationships between Occidental and Allen & Company at the time it wrote Plaintiff's Exhibit 9," now P123. A. Well, I don't know whether 'ignorant' is a proper term. I didn't think.

"Q. Uninformed. Would 'uninformed' be better? A. I didn't consider it relevant.

"Nizer: I call your attention to the date—well, go ahead.

"Q. But in any event, Chase had not been informed by you about any relationship between Occidental and Allen & Company, prior to July 15, 1965? A. No."

Now defendant offers, continuing at line 19, page 94, without objection:

"Q. Now, do you know whether this letter, Plaintiff's Exhibit 9, was forwarded directly by Chase to the Libyan government, or whether it was delivered to you for submission with your bid? (739) A. I don't know.

"Q. Now, in addition— A. It says at the top, 'via airmail,' probably sent directly to the government of Libya."

Plaintiff continues:

"Q. But it is your recollection that you did not attach a copy of this letter, Plaintiff's Exhibit 9, to your submission to the Libyan government? A. I have no recollection."

Passing now from line 6, page 95, to line 25 on page 96, offered by defendant but without objection:

"Q. Did you advise anyone having any connection with the Libyan government at any time prior to July 16, 1965, that Allen & Company would aid you financially in dealing with the concessions? A. No."

Passing now to page 98, line 9, also offered by defendant but without objection:

"Q. At any time prior to July 16, 1965, did you ever tell Mr. Ogbi or Mr. Galic or General DeRovin that Allen & Company would assist you financially in the exploitation of any concessions? A. No.

"Q. Prior to that date did you ever tell Mr. Ogbi or (740) Mr. Galic or General DeRovin that you could call upon Allen & Company for financial assistance if needed? A. No."

Passing from there, line 17, on that page, to page 100, line 7, offered by defendant but without objection until I mention it:

"Q. Well, did you advise any of your people, Mr. Brenner, Mr. Vaughan, or anyone in Occidental, that in their discussions with the Libyan people they could represent that Allen & Company would stand behind Occidental financially? A. My answer is categorically no.

"Q. And if any such representation was made, it was without your authority, is that what you are telling us? A. Yes."

Now, the part we object to, and I will read it, continuing in this answer:

"I believe that our net worth at the time we filed the concession was in excess of Allen & Company's net worth."

We object to that on the grounds previously stated, that it is not responsive. It is conclusory and self-serving.

Mr. Nizer: You might as well read the two answers (741) and they can be ruled on at the same time.

Mr. VanVoorhis: I was going to read them, because we don't object to the others. It is only that single sentence that we object to.

Mr. Nizer: I think the answer is inclusive.
Mr. VanVoorhis: It is certainly not responsive.
The Court: I don't think it is either.

Mr. VanVoorhis: "Q. Allen & Company's what? A. Net worth.

"Q. That is the partnership Allen & Company you are talking about; is that right? A. Whichever the one that publishes their net worth.

"Q. Well, now, in this connection, prior to July 16th, 1965, did you advise any of Occidental's personnel who were dealing with the Libyan people that they could advise the Libyan people that Allen & Company would underwrite any debentures or securities which Occidental needed to issue in order to raise funds to exploit the concessions? A. No."

Mr. Nizer: This is now conceded and you don't have to read the colloquy.

Mr. VanVoorhis: "Q. Well, now, you did enter into a writing signing by both of you, Occidental and Allen & Company, under date of December 17, 1964, did you (742) not? A. A writing?

"Q. 1964, that is. A. Yes, we entered into a writing subject to certain conditions that I mentioned before.

"Q. Whatever is set forth therein; is that right? A. Subject to certain conditions, yes.

"Q. And wasn't the purpose of that in order to insure that Allen & Company would stand behind Occidental financially? Did you advise Allen & Company that you were willing to enter into an arrangement with them, because you wanted their financing? A. No.

"Q. You never told that to Allen & Company? A. No.

"Q. Now, you indicated a little earlier, Dr. Hammer, that you thought that a letter purportedly signed by Kabazi was a forgery; is that correct? A. Either a forgery or it was dated"—

(Pause)

(743) Mr. VanVoorhis: Wait a minute, we do object to that.

Mr. Nizer: I thought you withdrew your objection. Would you read the answer, please?

"A. Either a forgery or that it was dated back to a time when it was supposed to have been written, namely, before the concessions were granted."

Mr. VanVoorhis: Now we pass from there, Line 12 on Page 102 to 104, Line 2. Plaintiff reading.

"Q. Well, did Mr. Brenner report to you orally about a trip he had made to Libya in the summer of 1964? A. Yes.

"Q. What did Mr. Brenner tell you about that trip and approximately when did he give you the report? A. He gave me the report shortly after he returned and he said that he had gone there with General DeRovin and that General DeRovin had introduced him to Mr. Ogbi and they had several conversations about the procedure to follow in applying for concessions and about other projects that Mr. Ogbi suggested to Mr. Brenner.

"Q. Did he tell you anything else? A. In a general way. That is about all he told me.

(744) "Q. Not in detail— A. Not the detail, but that is the general tenor of it.

"Q. How did Mr. Brenner report, by telephone? A. By telephone as I recall.

"Q. Approximately when was that, did you say? A. That was shortly after this trip.

"Q. Was that in July, August? A. I don't know what month it was. It was in the summer, late summer of 1964.

"Q. Now, what were these other projects which Mr. Brenner referred to? A. Well, he said Mr. Ogbi mentioned there was some I believe, potash, other phosphates,

in Libya, he believed that Occidental could develop in connection with the fertilizer business.

"Q. Did he mention anything else? A. No. Those were the principal projects.

"Q. Now, you say that General DeRovin went to Libya with Mr. Brenner, is that correct? A. That is to the best of my recollection.

"Q. Now, how did Mr. Brenner meet General DeRoven? A. Mr. Brenner was introduced to General DeRovin by Mr. Galic.

(745) "Q. When was that? A. Well, after Herbert Allen had called me in early August, I believe it was, or late July, I called up Mr. Brenner and I told him to get in touch with Mr. Galic. I gave him Mr. Galic's address, telephone number, and as I understand it, Mr. Brenner called up Mr. Galic, and I think Mr. Galic was away, but he spoke to him on the phone and he told Mr. Brenner to see General DeRovin, and gave him, Mr. Brenner, DeRovin's address and telephone number.

"Q. This is what Mr. Brenner reported to you? A. Yes.

"Q. All right. Now let's go back to this conversation that you had with Herbert Allen. When did you say that took place? A. I believe that took place either the last of July or the first part of August.

"Q. Was that on the telephone? A. Yes.

"Q. Where were you at the time? A. I believe I was in Los Angeles.

"Q. Now, what did Mr. Allen say to you and what did you say to him, in that conversation? (746) A. Mr. Allen told me that he had a very, very important deal which involved Libyan oil, concessions. He said that they had received word from somebody, whom they had fullest confidence in as a personal friend of Mr. Charles Allen, a man of some standing and substance, who—who had knowledge of Libya, Libyan conditions, and who felt

that he could be instrumental in getting concessions in Libya, and that Allen & Company wanted to know if Occidental was interested.

"I said, 'Yes, we would be interested.'

"He said, 'The man's name is Mr. Galic,' and he said 'he and one of his associates, General DeRovin, are the people who are associated in this venture, and I will call Mr. Galic and tell him that he will hear from you, and then you call him.'

"Well, instead of calling Mr. Galic, I called Mr. Brenner because Mr. Brenner was located in Paris, and Mr. Brenner called Mr. Galic, and then Mr. Galic put Mr. Brenner in touch with General DeRovin.

"Q. In that first conversation between you and Herbert Allen, did Mr. Allen give you Galic's phone number? A. Yes.

"Q. Do you recall what it was? A. No.

(747) "Q. Did he give you Galic's address? A. I am not sure whether he gave me his address or not. I am sure he gave me his phone number.

"Q. Did he tell you his full name? A. Yes, I think he did.

"Q. Was that Ferdinand Galic? A. I am not sure whether it was Ferdinand—I believe it was Ferdinand, yes.

"Q. Did he tell you that Mr. Galic was a business broker? A. No. He told me that Mr. Galic was a man of some standing and importance, and that he was his brother's close friend, his brother had the utmost confidence in Mr. Galic, and that therefore they considered this of great importance.

"Q. Now, in that conversation did Mr. Allen tell you what interest, if any, that Allen & Company wanted in this project? A. No. He said if you do anything, we would like to be in on it. That was his statement in a general way.

"Q. What did you say to that? A. Well, I said, 'We will look into it and let you know after we have looked into.'

"Q. What else did you tell him? A. That is all.

(748) "Q. Is that the totality of the conversation? A. Yes.

"Q. And you are sure that in that conversation Mr. Herbert Allen mentioned DeRovin? A. Yes, I am. He mentioned Galic and DeRovin, both, because I recall he said that DeRovin was the man who had lived in Libya and spent many years there.

"Q. That is what Herbert Allen told you? A. Yes.

"Q. Did you make a memorandum of this conversation? A. No.

"Q. Now, how long after this conversation with Mr. Herbert Allen did you call Mr. Brenner? A. I believe the next day.

"Q. And I take it you told Mr. Brenner to get in touch with Mr. Galic? A. Yes.

"Q. And you gave him Mr. Galic's phone number? A. Yes.

"Q. Did you tell him what the purpose of his calling Mr. Galic was? A. Yes.

"Q. What did you tell him on that score? (749) A. I told him that I had received a call from Mr. Herbert Allen of Allen & Company, that he had told me that they had received a call from Mr. Galic who was a man of considerable standing and was a close friend of Mr. Charles Allen, and that Mr. Galic had told them that he had information and friend who could be of considerable assistance to Occidental in getting concessions in Libya, and that Mr. Allen thought it was a matter of great importance and that I would like him to call Mr. Galic and investigate it further.

"Q. Did you mention General DeRovin to Mr. Brenner? A. I'm not sure whether I mentioned General DeRovin or not.

"Q. Do you know whether or not Mr. Brenner made a memorandum of your conversation with him? A. I have no such knowledge.

"Q. Mr. Brenner never told you? A. No.

"Q. I take it there has been no search of Mr. Brenner's files for any such memoranda; is that correct? A. We haven't found any memoranda.

"Q. But have you searched Mr. Brenner's files? A. Well, we—there has been no memorandum that I remember seeing.

(750) "Q. Let me ask you this question: Did you ask Mr. Brenner to search his files for any memoranda of any conversation that he had with you or anyone else in connection with the Libyan concessions? A. I don't recall any.

"Q. Insofar as you know, Mr. Brenner never told you that he had any such memoranda, is that correct? A. I don't remember any—him telling me that he had such memoranda."

Continuing, this is offered by defendant but without objection.

"Q. Now, in this initial conversation which you had with Herbert Allen, was there any mention made of Walter Maguire? A. No.

"Q. Or Associated Gas and Oil? A. No."

Passing from there, which is Line 3, on Page 111, to Page 112, Line 3:

"Q. Are there any directors' minutes of Occidental relating to Occidental's activities in Libya, if any, prior to July 1964? A. I don't know whether there is any reference to (751) it or not.

"Q. I beg your pardon? A. I don't know whether there is any reference to it or not."

And passing from there, which is Line 22 on 112 to 113, Line 6:

"Q. Now, as I understand it, after your conversation with Brenner, Brenner reported to you about his conversation with Galic, is that correct? A. Yes.

"Q. That was some time in August of 1964? A. Yes.

"Q. Now, what did Brenner report to you was his conversation with Galic? A. Brenner reported to me that Mr. Galic told him to get in touch with General DeRovin, gave him General DeRovin's telephone number.

"Q. Is there anything else? A. No. I think he told me that Mr. Galic was out of Paris at the time, and therefore he met with Mr.—General DeRovin alone, without Mr. Galic.

"Q. But he did, somehow or other, get in touch with Mr. Galic before he spoke to General DeRovin, is that correct? (752) A. Yes, that is correct.

"Q. Did he report to you whether he saw Mr. Galic face to face, or whether he talked to him on the telephone? A. My best recollection is that he only talked to him on the telephone.

"Q. In that telephone conversation, as reported to you by Mr. Brenner, Galic said to get in touch with General DeRovin? A. Yes.

"Q. He gave him General DeRovin's telephone number, is that correct? A. That is correct.

"Q. And that you believe was some time early in August of 1964? A. Yes.

"Q. Did you make a memorandum of that conversation? A. No.

"Q. Did Mr. Brenner report any of these conversations to you by way of letter or memorandum of any kind? A. I don't recall any.

"Q. You have searched and have found none, is that correct? A. I don't recall seeing any.

"Q. I take it you don't know whether or not Mr. (753) Brenner made such a memorandum for his file? A. No.

"Q. Now, did I understand you to say that Mr. Brenner reported to you that he did get in touch with General DeRovin, after talking to Galic? A. Yes.

"Q. And I take it he got in touch with General DeRovin directly, and that Galic wasn't there when he first talked to or met General DeRovin, is that correct? A. Yes.

"Q. Do I understand you, that [illegible] General and Mr. Brenner then went to Libya? A. Shortly thereafter.

"Q. Shortly thereafter? A. Yes.

"Q. Was that in August of 1964 also? A. Yes.

"Q. Now, sir, what were Mr. Brenner's duties at that time? A. Well, he was the head of our Paris office and his duties was to do any—any assignment which was given to him.

"Q. By you? (754) A. Yes.

"Q. Was he an engineer? A. No.

"Q. Did the Paris office function throughout Europe and Africa, to the extent that you might want to send him there? A. Wherever I wanted to send him, yes.

"Q. Now, at that time did you have an office of any kind in Libya? A. No.

"Q. Was your only European office located in Paris, France at that time? A. No.

"Q. Where else did you have a European office at that time? A. I had an office in London and an office in Milan.

"Q. Who was the head of your Milan office? A. A Mr. Beninni.

"Q. Who was in charge of your London office? A. Mr. Collins.

"Q. Now, as between the three of them, Brenner, Beninni and Collins, was any one of them the superior of any of the others? (754) A. No.

"Q. So that all three reported directly to you? A. Yes.

"Q. Now, I believe you told us earlier that Mr. Brenner reported to you concerning his trip to Libya with General DeRovin, is that correct? A. Yes.

"Q. And you said that they there met with Mr. Ogbi? A. Yes.

"Q. Did he tell you that he met with anyone else besides Ogbi? A. No.

"Q. Now, I assume from what you say that Brenner reported to you that General DeRovin introduced Brenner to Ogbi? A. Yes.

"Q. Now, what did Mr. Brenner tell you was the business of Mr. Ogbi, in his report to you? A. He said Mr. Ogbi was a businessman and that General DeRovin had told him that Mr. Ogbi was a great industrialist in Libya and a man of great wealth, great standing.

"Q. Did he tell you with whom he had this great (755) standing? A. He said he had great standing in the community, that he was a man of great business interests, and he was—had been built up by General DeRovin into a great businessman.

"Q. Now, did Mr. Brenner report to you that he had seen Mr. Ogbi in Mr. Ogbi's place of business? A. No, he did not.

"Q. Did he tell you that he met Mr. Ogbi some place other than at Mr. Ogbi's place of business? A. I think he said that he had—that he had dinner at Mr. Ogbi's home with General DeRovin.

"Q. Did he report to you that Mr. Ogbi's home indicated that Mr. Ogbi was a man of wealth? A. No.

"Q. Did Mr. Brenner advise you as to whether or not he had conducted any investigation of Mr. Ogbi? A. No.

"Q. He simply took General DeRovin's word for it and so reported to you, is that correct? A. That is correct.

"Q. All right. Now, in connection with Mr. Brenner's visit to Libya, did he advise you that some communica-

tions (756) would be forthcoming shortly from Mr. Ogbi? A. I don't recall his advising me, but we did get some communications from Mr. Ogbi."

Passing now from Line 21, Page 118 to Line 12, Page 119.

"Q. Mr. Hammer, did you actually receive and read the original of Defendant's Exhibit 4 for identification, being a letter dated August 14, 1964, to you from Mr. Ogbi?"

* * *

"A. Yes.

"Q. Mr. Hammer, did you actually receive and read the (757) original of Defendant's Exhibit 4 for identification, being a letter dated August 14, 1964, to you from Mr. Ogbi? A. Yes.

"Q. Did you receive and read that letter on or about the date it bears? A. Yes, as long as it would take, I imagine, to get from Libya to Los Angeles.

"Q. Did you note at the time that a copy of this had been sent to your Mr. Brenner? A. Yes.

"Q. Did you and Mr. Brenner discuss this letter dated August 14, 1964? A. Yes.

"Q. Did Mr. Brenner tell you who 'my friends' were as referred to in the second paragraph of the letter dated August 14, 1964? A. No.

"Q. Well, you understood, did you not, when you read that, that that meant more than Mr. Ogbi? A. Well, I assume that Mr. Ogbi, as a prominent industrialist and businessman, would not be alone, would have other associates.

"Q. Well, did you understand that the friends referred to people in the Government? (758) A. No.

"Q. Didn't Mr. Brenner tell you that, that he had met people there who were involved in the Government? A. No. Mr. Brenner, on the contrary, said he had not met anybody involved in the Government.

"Q. Incidentally, did Mr. Brenner tell you anything at all about the reception which General DeRovin had in Libya? A. No.

"Q. Well, did he tell you that the people in Libya were very cool to General DeRovin? A. No. He said that Mr.—General DeRovin was warmly received by Mr. Ogbi and, I notice that Mr. Ogbi sent a copy of this letter to General DeRovin in Paris.

"Q. Yes. And did Mr. Brenner tell you that he met anyone besides Mr. Ogbi in Libya? A. I do not recall him telling me that.

"Q. Did he tell you that it appeared General DeRovin was a man of virtually no influence in Libya? A. No.

"Q. Did he tell you that it appeared General DeRovin was a man of influence in Libya? A. Mr. Brenner was under the same illusion that I was.

(759) "Q. I understand he was under illusions, but I am asking what he told you. I want to know what he was told, not what illusions Mr. Brenner may or may not have had. A. Mr. Brenner said he—that Mr. Ogbi had told him that General DeRovin was *persona grata* in Libya, and that he was happy that General DeRovin had brought Mr. Brenner to meet him.

"Q. Now, going over to the second page, you will note that it says under subparagraph (d0):

"We shall keep Mr. Brenner advised of any moves of competition, both in relation to the first and to the second project.

"Did you see that? A. Yes.

"Q. Did you authorize Mr. Brenner to employ Mr. Ogbi for that purpose? A. No. But I believe that Mr. Brenner felt that Mr. Ogbi, because of his wide connections in Tripo-i and his extensive business interests, would have his ear to the ground and be able to pick up information as to what our competition was in Libya.

"Q. Now, did Mr. Brenner advise you, orally, (760) over the telephone, that he had asked Mr. Ogbi to keep his

ear to the ground and advise Mr. Brenner of any competitive moves? A. I don't recall him using those—

"Q. Did Mr. Brenner tell you that he had asked Mr. Ogbi to work for no one other than Occidental in connection with Libyan concessions? A. Yes, they had—they apparently had agreed that—that until March 30, 1965, that Mr. Ogbi would work exclusively for us.

"Q. Was that pursuant to the authority which Mr. Brenner had vested in him by you? A. Well, I believe Mr. Brenner had authority to assure Mr. Ogbi of our interest and to discuss with Mr. Ogbi conditions under which we would like to work with him."

Passing from there to Page 123, Line 8 to Page 124, Line 25

"Q. Did there come a time when Mr. Brenner made another visit to Libya, to your knowledge? A. Yes.

"Q. And when was that, the next visit of Mr. Brenner? A. I don't recall exactly.

(761) "Q. Well, give it to us inexactly. A. I am not sure whether it was made prior to the meeting in Paris—I mean in London, on September 18, or after. I am not sure.

"Q. Let's put it this way: Did Mr. Brenner meet you in London? A. Yes.

"Q. He was at the meeting in London? A. Yes.

"Q. Did he at that time report to you on a second visit to Libya? A. I don't recall.

"Q. Did there come a time when you sent geologists to Libya? A. Yes.

"Q. With Mr. Brenner? A. Yes.

"Q. When was that? Maybe that will help you refresh your recollection. A. I think that was after the meeting in London, on September 18.

"Q. Was it in the year 1964 but after the September 18th meeting? Is that correct? A. That is correct."

* * *

(762) "Q. Did Mr. Brenner report to you that Mr. Ogbi was requesting to use his position and friends to help Occidental in obtaining concessions? A. Mr. Brenner reported Mr. Ogbi would use his best efforts to obtain concessions, yes. To that extent he did report.

* * *

"Q. Now, what did Mr. Allen say to you about Ferdinand Galic? (763) A. He said he would—Mr. Galic wanted to be sure that he was compensated for his services.

"Q. For what services? A. For the services of helping us in obtaining concessions in Libya by introducing us to General DeRovin.

"Q. Is that what Herbert Allen said? A. Yes."

This is offered by the defendant, by the way.

"Q. And that was all of the services that Mr. Galic was to perform, is that correct? A. Not necessarily. It was all that—up to that time that he had performed.

"Q. In other words, at this point, Herbert Allen is asking you to be sure that Galic is compensated for his services, in introducing General DeRovin to Mr. Brenner, is that correct? A. That's correct.

"Q. And that was the totality of the services at this point— A. Yes.

"Q. —which Herbert Allen wanted Galic to be protected on, is that right? A. That's correct."

(764) Mr. VanVoorhis: Passing from there to Page 132, Line 5, read by plaintiff:

"Q. What did you say when Herbert Allen said that Galic wanted to be compensated for introducing Brenner to DeRovin? A. I said that I—that whatever compensation we had with Galic would have to be mutually agreed upon.

"Q. Well, I mean, after all, this couldn't have amounted to more than a few hundred dollars, could it, picking up

a telephone and introducing a man? A. I don't think so. I think Allen & Company would expect a finder's fee for introducing somebody if it went into much later amounts than a few hundred dollars.

"Q. It is what Mr. Galic wanted. We are talking about Mr. Galic. A. Mr. Galic was the man whom Allen & Company were relying on and it was through Mr. Galic that we were being—that this whole venture—we were being made aware of this so-called opportunity.

"Q. Well, now, what other services did you have in mind for Mr. Galic at this time, September 1964? A. I didn't know."

Mr. VanVoorhis: We object to the rest of the (765) answer. Do you want me to read it?

Mr. Nizer: I will read it. The question is:

"Q. What other services did you have in mind for Mr. Galic at this time, September 1964. A. I didn't know. I felt, therefore, that I was not going to be committed without having a discussion with Mr. Galic and without having reached a mutual agreement. I was not going to be committed, as Mr. Allen wanted me to, to make an arrangement satisfactory to Mr. Galic. That was quite an open end commitment, and I said under no circumstances would I agree to that.

"And I immediately answered Mr. Allen's letter to that effect."

I believe that is responsive to the question, your Honor.

Mr. VanVoorhis: It is objected to as not responsive and simply the operation of the witness' mind.

The Court: Read the next question.

Mr. Nizer: The next question.

Mr. VanVoorhis: Wait a minute, this is the next question.

"Q. Wait a minute. We will hold that off for a moment. We are talking about the telephone conversation. A. Yes, I told him that on the telephone and wrote (766) him that in a letter."

Mr. Nizer: This is not objected to by either side.

Mr. VanVoorhis: That is right.

Plaintiff reading:

"Q. But, in any event, you did agree with Mr. Allen, did you not, that Ferdinand Galic would be compensated on a mutually satisfactory basis for his services in the various Libyan matters, whatever they might be, is that correct? A. That's correct.

"Q. And at that time the only service which Mr. Allen was talking about was the introduction of General DeRovin to Mr. Brenner, is that correct? A. That's correct. Not merely that but bringing General—the opportunity to Occidental through General DeRovin. This was the great service that Allen & Company were performing and Allen & Company, in turn, were relying on Galic and this was the chain of events, and this was the deal.

"Q. Well now, in connection with Allen & Company, Herb Allen was talking about a different subject, wasn't he, than mere compensation? A. Well, Allen—on top of the compensation for (767) Galic—and I believe you mentioned Klehe & Company, they were thrown in for good measure—on top of that, Allen & Company said that they wanted—they would like to participate and I said fine, they could participate providing anything concrete came of this, and providing that they would put up their share of the investments with Occidental."

Mr. VanVoorhis: Now the defendant offers subject to our objection—do you want to read that part?

By Mr. Nizer:

"Q. Isn't that what Mr. Herbert Allen told you Allen & Company would do, that they would pay their share of the freight? A. He said—he wanted it to be mutually agreed upon. In other words, it was no agreement unless it was mutually agreed upon.

"Q. I understand that but wasn't Mr. Allen talking to you about participation in a venture in Libya under which Allen would pay its participating share of the costs and expenses? A. If they wanted to. If they knew what they were in advance, and they were willing to commit themselves, then there would be such an understanding. But it was all (768) conditional upon a mutual agreement and there was no commitment by Allen at that point.

"Q. In other words, you understood, did you not, that Allen expected to pay its share, it wasn't expecting something for nothing? A. It depended on the circumstances. Allen might pay their share if it was $100,000, but if it was $10,000,000, Allen might say, 'We don't want to pay our share, we don't want to go in it.'

"Q. Then they could not participate? A. That's right. Then they could not participate.

"Q. But if Allen did participate, Allen would have to pay its prorated share of cost, isn't that the way Mr. Allen was talking about it? A. He wanted the freedom at any time to say whether they wanted to put up their money or not."

Mr. VanVoorhis: Now may I state our objection?

Our objection to that is that it is impossible to tell from that testimony when and where Dr. Hammer is stating what was said between him and Herbert Allen and his own self-serving opinion or conclusions about the transaction. If he had said this, or to the extent that he said it to Mr. Allen, we would not object, but quite patently in this he is

(769) going way beyond that and is testifying to his own self-serving construction of the understanding which was reached.

I think that for that reason and without its having been clarified or being clarified, that it is objectionable, partly as not responsive, partly as conclusory, self-serving, all that I have said in my objection.

Mr. Nizer: He is talking about conversations. The conversations are with Mr. Allen and the conversations are set forth pursuant to direct questions by counsel, your Honor, and I think it is pertinent and properly responsive.

The Court: I would assume if there was any issue as to when and where this conversation, which the witness related took place that the witness was asked about when and where. If that is the ground of objection. I don't see that that really makes very much difference. I will take it to the extent it appears to be the heart or the substance of a conversation which the witness testified he had with Mr. Allen. Obviously, his own interpretation is another matter.

Further, didn't your client testify as to this subject also?

Mr. Greenspoon: Your Honor, I think—

Mr. VanVoorhis: As to what was said, the point, (770) your Honor, I would agree with the rationale of your Honor's rule except that as applied to this testimony, it is impossible to tell from the testimony where the witness was stating what was said and where he is simply indulging his own conclusions as to what was going on in Mr. Herbert Allen's mind.

The Court: Well, if it was important to ascertain where it was said, why wasn't he asked questions about it. I don't see that that is significant.

Mr. Greenspoon: Your Honor, there is something in the record which I don't think has been offered by any party, and this deals with conversations, supposed conversations, which preceded the London meeting. I think the date is fixed from a document which may or may not be in evidence as some time around September 1, or possibly earlier, 1964, according to Mr. Hammer.

The Court: The only point I am making in response to Judge VanVoorhis' objection as regards a date and place, it does seem to me that if this is a matter that is of any significance as to the precise date and precise place, counsel should have inquired about it.

I don't think that is a basis for me to exclude the conversation which the witness testified he had.

(771) I will only receive the conversation, so obviously the self-serving declarations—if it is part of the conversation it will go in, but I am referring to what Judge VanVoorhis referred to as his interpretation thereafter. That will be excluded.

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(772) Afternoon Session
2:15 P. M.

The Court: You may proceed.

Mr. VanVoorhis: We skip from page 135, line 20 and start at page 137, line 24, which is offered by the defendant, without objection:

"Q. Now, didn't you report on Mr. Brenner's conversation to you, to Mr. Herbert Allen some time in late August of 1964? A. I don't recall.

"Q. Don't you say so in Defendant's Exhibit 27 for identification?

"Is that right? A. Yes."

Mr. VanVoorhis: What is the corresponding number to 27?

Mr. Greenspoon: It is the letter dated September 5, 1964, Plaintiff's Exhibit 31 in evidence.

The Court: All right.

Mr. VanVoorhis: (Reading)

"Q. Well, now, that conversation took place, did it not, earlier than September 1, 1964? A. Yes.

"Q. Now, what was that conversation? (773) A. That was the conversation that—that took place when Mr. Brenner reported on his trip to Libya.

"Q. And you reported Mr. Brenner's report, did you not, to Mr. Herbert Allen; is that right? A. In a telephone conversation, yes.

"Q. Well, now, why did you report Mr. Brenner's report to Mr. Herbert Allen? A. Well, I had met through Mr. Herbert Allen—he was the one that brought Mr. Galic to me, and Mr. Galic had brought General deRovin, and General deRovin had brought Mr. Ogby, and Mr. Allen had said in his initial conversation with me that he was—that Allen & Company were interested in participating in any possible oil concessions in Libya, so therefore, I was keeping him advised of what happened."

Mr. VanVoorhis: We will pass from line 7 on page 139 to page 140, line 22.

This is also offered by the defendant, without objection:

"Q. Let's go down to Defendant's Exhibit 27"—Plaintiff's Exhibit 31—"and you apparently deny that you had discussed Klehe & Company in your oral conversation. Do you see that?

'I did not assure you that Ferdinand Galic and Klehe & Company would be compensated.'

(774) "And then you go on to say, 'Klehe & Company's contract'— A. You left out some words, 'To their satisfaction.'

"Q. I know.

"And then you go on to say, 'Klehe & Company's contract with us provided for their compensation.'

"Do you see that? A. Yes.

"Q. Now, did Klehe & Company's contract have anything to do with Libya? A. No. But it just had to do with any—any activities that Klehe & Company might be engaged in for Occidental.

"Q. Well, was this a written contract between Occidental and Klehe & Company? A. Yes."

Mr. VanVoorhis: We pass from line 18 on page 141 to line 4 on page 142.

This is offered by defendant, without objection:

"Q. Now, you go on to say, 'I did say and I am glad to confirm again that we would welcome Allen & Company's participation on a mutually satisfactory basis.'

"Do you see that? A. Yes.

(775) "Q. Now, when did you say that for the first time? A. I said that in a telephone conversation with Mr. Herbert Allen.

"Q. Which telephone conversation with Mr. Allen? A. In the—in the conversation that took place after Mr. Brenner's return from Libya.

"Q. And after Mr. Brenner had reported to you? A. And I believe also in the first conversation that I had with Mr. Herbert Allen when he called me.

"Q. When he called you to talk about Galic? A. Yes.

"Q. So that this is the third time that you are saying that you would welcome Allen & Company's participation on a mutually satisfactory basis; is that correct? A. That's right.

"Q. Now, you go on in the next sentence to talk about an ammonia plant as well as applying for a drilling concession.

"Do you see that? A. Yes.

"Q. 'Which projects are under consideration by the Libyan Government.'

"Do you see that? A. Yes.

(776) "Q. 'Having been submitted by me on my previous trip to Libya.' A. Yes.

"Q. When was your previous trip to Libya? A. I believe it was in 1963.

"Q. And you say that you had applied for a drilling concession. Is that the 1963 application you referred to before? A. The informal application that I referred to.

"Q. Now, can you tell us what the bidding block number was for that drilling concession? A. There was no bidding block at that time.

"Q. Why? What was to be negotiated at that time? A. We just asked that we be considered for a concession without specifying any particular area.

"Q. Well, did you know at that time what areas were under consideration by the Libyan Government to be allocated for drilling concessions? A. No.

"Q. At that time and, to wit, September 1964, had the Libyan Government issued any document indicating what areas would be considered? A. No.

"Q. So that the 1963 informal application was a (777) mere request that you consider us if, as and when you decide to permit bidding; is that right? A. Not necessarily.

"Q. Well, would you tell us what was then? A. It was an application that we be considered for a drilling concession and we offered at that time to build an ammonia plant in Libya. And to utilize the gas that was being flared and was part of our proposal, we suggested that the government grant us a concession to be negotiated.

"Q. Well, you go on to say, 'Which projects are under consideration by the Libyan Government.'

"Do you see that? A. Yes.

"Q. Now, can you tell us what consideration the Libyan Government was giving to your application for a drilling concession at that time? A. I believe it was referred to some committees or some ministries who were studying it at that time.

"Q. Were they royal committees or legislative committees? A. They were ministries.

"Q. Well, committees of the ministry? A. Of various ministries.

"Q. And was one of those ministries that of Fuad (778) Kabazi? A. No, Fuad Kabazi was not a minister.

"Q. At that time? A. That's right.

"Q. Now, do you know the name of the Minister of Oil at that time? A. I don't recall.

"Q. Did you ever meet him? A. Yes.

"Q. When? A. When I was in Libya.

"Q. That was in 1963? A. Yes.

"Q. So I gather that you had not been in Libya at any time after 1963, and up to September 5, 1964? A. I don't remember whether I was there or not prior to September, 1964.

"Q. Well, you know you were there in 1963? A. Yes, but I don't know whether I was there in between.

"Q. Can you give us a date as to when you were there in 1963? A. No, I cannot.

"Q. Well, was it in the summer, winter, fall or (779) spring? A. I cannot recall.

"Q. Was it in the first half of the year or the second half of the year? A. I would have to refresh my recollection.

"Q. Well, do you have any document or piece of paper from which you could refresh your recollection? A. Yes, perhaps I could find an old passport.

"Q. Fine.

"Would you check it and let us know? A. Yes."

This is offered by the defendant, without objection:

"Q. Now, were in Libya prior to 1963? A. Yes.

"Q. And when were you there for 1963? A. I believe I was there in 1961, may have been in 1962.

"Q. Now, in 1961, did you apply for any drilling concessions? A. No.

"Q. In 1962 did you apply for any drilling concessions? A. No.

(780) "Q. Well, what sparked the application in 1963, if anything?"

There is a comment.

"A. I will answer it.

"It is perfectly known to the entire oil fraternity that Libya was a place to get concessions, and that there had been some concessions issued in prior years, and that undoubtedly, there would be more concessions issued later.

"It was a good thing to go there and find out as much as you can about the terms and conditions as to concessions that had been issued in the past, what might be required in the future.

"Q. And that was what caused you to decide to try to get the concession in Libya in 1963? A. Yes.

"Q. Correct? A. That's correct.

"Q. But this was a general application and nothing specific in mind? A. That's right.

"Q. Did I understand you correctly to say that all you asked for was a drilling concession without any specifics as to place? (781) A. Well, you didn't hear my answer. I said the area to be negotiated.

"Q. At that time did you have any geologist report on Libya on potential concessions in Libya? A. We had

general geological information. We were getting information all the time.

"Q. Getting it from whom? A. From various sources.

"There were people that had made studies of geological maps, and they were—I think we bought some geological information, maps and so on.

"I am not familiar with the details of that.

"Q. Had any of Occidental's geologists been to Libya at any time prior to September 5, 1964, for purposes of running surveys and making studies? A. I believe they had.

"Q. Would that be Mr. Vaughan? A. No. It may have been other geologists who were engaged to go to Libya for that purpose.

"Q. But you don't recall who they were or when they went? A. I don't remember now, but there were others."

Mr. VanVoorhis: Passing now from page 149 to page 152, line 21.

(782) This is offered by defendant, without objection:

"Q. Now, did you say that you had a meeting in London in mid-September 1964 with General deRovin and other people? A. Herbert Allen and General deRovin.

"Q. Yes. A. Yes.

"Q. And others? A. And Brenner—I mean they were all there at that time.

"Q. All right. Now, who set that meeting up? A. I am not sure whether it was Galic or General deRovin.

"Q. Didn't you communicate directly with General deRovin to set that meeting up? A. No.

"Q. Do you know whether or not it was Mr. Brenner who arranged for that meeting? A. I do not know.

"Q. How did you become advised that such a meeting would be held? A. Mr. Brenner told me that Mr. Ogby was coming to—through London, and that General deRovin would be in (783) London at the same time.

"Q. Did Mr. Brenner suggest to you that you should come to London? A. Yes.

"Q. Did you say that you would? A. Yes.

"Q. Did that take place on or about September 8, 1964? A. I don't remember the date.

"Q. I mean when Mr. Brenner advised you that Mr. Ogby was coming to London. A. I don't know exactly when it was.

"Q. Well, on September 8, 1964, did you have a conversation with Mr. Herbert Allen? A. I know I had conversations, but I don't know exactly what date.

"I believe he told me around that time that he would be in London as well at that time.

"Q. In other words, you did have a conversation? A. He knew about the meeting, and I believe he told me he would be there as well.

"Q. And this took place prior to your going to London? A. That is right.

(784) "Q. Now, who selected the site of London for the meeting, if you know? A. I don't know.

"Claridge's is the hotel I usually stay at. I believe that was the reason.

"I had other business in London besides this.

"Q. Well, now, was it you, then, who selected the site of London for the meeting? A. I don't recall. Probably Mr. Brenner or—in conversation with Mr. deRovin, or General deRovin.

"Q. Prior to your going to London, you did have this conversation with Herbert Allen in which he indicated that he too would be there? A. That is correct.

"Q. Now, what else was said in that conversation with Herbert Allen? A. That is all I can recall.

"Q. Didn't he mention that Walter Maguire would be there? A. No.

"Q. No mention of Associated Gas and Oil? A. None whatsoever."

Mr. VanVoorhis: Continuing on line 21, offered by plaintiff:

(785) "Q. Well, now, I show you Defendant's Exhibit 5"—

Mr. VanVoorhis: Do you have a corresponding number?

Mr. Greenspoon: That is now Plaintiff's Exhibit 32 in evidence, your Honor. It is a letter dated September 7, 1964.

Mr. VanVoorhis: Line 22:

"—and ask you if Mr. Herbert Allen sent to you a copy of that letter at or about the date it bears. A. I don't recall receiving this letter from Mr. Herbert Allen.

"Q. Would you look at your copy of Defendant's Exhibit 28 for identification? You did receive the original of that letter, did you not?"

Mr. Greenspoon: Your Honor, that is Plaintiff's Exhibit 33 in evidence. The date is September 8, 1964, from Herbert Allen to Hammer.

Mr. VanVorhis: (Reading)

"Q. Do you have the original of that letter here, Mr. Hammer? A. No, I do not.

"Q. In the very first paragraph, a telephone conversation is mentioned. Do you see that? A. Yes.

(786) "Q. And that conversation was between you and Herbert Allen on September 8, 1964; is that correct? A. Yes.

"Q. Now, will you tell us what that conversation was, and who called whom? A. I don't recall who called who, but I think it—I was very eager to see that there was no misunderstanding about compensation, and I believe in Herbert Allen's letter to me of September 1st, he had correctly quoted me by saying that I would—that I had assured him that Ferdinand Galic and Klehe & Company would be compensated to their satisfaction.

"And this letter from Mr. Allen confirmed the telephone conversation in which I straightened him out that the compensation for Galic was to be on a mutually satisfactory basis.

"Q. Well, didn't you also— A. He also quoted in this letter—I see that Mr. Allen also sent me a copy of Galic's letter written to Charles Allen, of September 7th.

"Q. Now, does that refresh your recollection that you did receive a copy of Defendant's Exhibit 5 for identification?"

Mr. Greenspoon: Plaintiff's Exhibit 32.

(787) "A. Well, I must have received it, if it says so, but I have no independent recollection.

"Q. Did you discuss the impending trip to London with Herbert Allen in that conversation of September 8th? A. I don't recall.

"Q. Isn't it the fact, Mr. Hammer, that Herbert Allen called you and told you that he had been advised by Galic that you were having this meeting in London? A. He may have. I have no recollection of it.

"Q. Didn't he tell you that he thought that he should be present to protect the interests of Allen & Company? A. I don't recall him saying that.

"Q. You deny that he said that? A. I don't deny it and I don't affirm it."

Mr. VanVoorhis: This is offered by defendant, without objection:

"Q. Didn't Mr. Allen in that conversation also tell you that he was bringing Walter Maguire to London? A. Walter Maguire's name was never mentioned in any telephone conversations with Mr. Herbert Allen.

"Q. Didn't Mr. Allen tell you that he thought this should be a three-way deal between Allen & Company Occidental and Walter Maguire's company, Associated (788) Gas & Oil? A. At the time I met Mr. Allen in London on or

about September 17th, he told me that—he asked me if it would be agreeable to have Associated Oil and Gas participate with Allen & Company and Occidental, in this venture.

"I told him that it would not be acceptable to us.

"Q. It is your testimony that prior to September 17th, or whatever the date the meeting was, Mr. Allen had not mentioned Walter Maguire or Associated Gas and Oil to you, is that correct? A. That is correct, in this connection.

(789) Mr. VanVoorhis: This is read at the instance of defendant without objection, except as stated:

"Q. Yes, in connection with Libya. A. Yes. In fact, I was surprised to learn from Mr. Herbert Allen's testimony that Mr. Maguire was in Claridge's at the same time I was because he was a good friend of mine and I was surprised that he was there, and I wasn't told that he was there, and Mr. Herbert Allen had never arranged for me to meet him.

"Q. Now, in the conversation of September 8, 1964, did Mr. Allen say to you, in words, substance or effect, that Allen & Company wanted a piece of any concessions obtained in Libya? A. He didn't say Allen & Company wanted a piece.

"Q. They wanted to participate in any concessions which Occidental got in Libya, and they would bear their share of the freight? Isn't that what he told you? A. No, sir.

"Q. Do you deny that he made such statements? A. In those words, yes.

"Q. No, in substance? A. No. He said that they wanted to participate on a mutually satisfactory basis—"

Now, the rest we object to as merely the operation (790) of the witness' mind "which means an agreement to

agree, but it doesn't necessarily mean any commitment unless both parties agree to it."

Mr. Nizer: I think you made the objection in the middle of the sentence. If you would be good enough to read it and then make your objection.

Mr. VanVoorhis: I have read it.

Mr. Nizer: You cut it in half.

The Court: Judge VanVoorhis objects to that portion of the answer which begins with "which means an agreement to agree," and so forth.

Mr. Nizer: The question was "No, in substance?" and he gives the substance: "They wanted to participate on a mutually satisfactory basis which means an agreement to agree—"

Mr. VanVoorhis: I don't mind the basis, but I object to his conclusory statement "which means an agreement".

The Court: Can't we take this on the same basis as previously, that is, that the witness's testimony as to what was said will be received. His interpretation, of course, will not be received.

* * *

(791) "Q. What did you say to that? A. I said what I had said from the very beginning, that we would welcome Allen & Company's participation, (792) but we would welcome it on a mutually acceptable and satisfactory basis."

Now, we pass from there to page 163, line 2, offered by plaintiff:

"Q. Well, just to put this in context, as of September 8, 1964, you owned no property in Libya, isn't that correct? A. That is correct.

"Q. You had no contract to build any ammonia plant; is that correct? A. That is correct.

"Q. You had no concessions awarded to you; is that correct? A. That is correct.

"Q. You didn't have a single piece of business in Libya at that time? A. That is incorrect."

Now, defendant, without objection:

"Q. What piece of business did you have in Libya as of September 8, 1964? A. We had an application pending before the Government, which was being considered by the Government, for granting an oil concession to us in Libya and for building an ammonia plant, a fertilizer plant."

(793) Mr. Greenspoon: Your Honor, there has been so much discussion about this informal application of 1963 that I would like to offer it in evidence at this time.

Mr. Greenspoon: The July, whatever the thing is, in 1963.

Mr. Nizer: I object to it on the grounds that it is irrelevant to anything here. The witness answered questions, but I don't think that prior arrangements can effect this present litigation. He was asked questions whether he had ever been there, he had answered truthfully he was, but I don't think offering any prior negotiations, deals, will get us into a collateral matter that has anything to do with this.

Mr. VanVoorhis: Well, it has been urged by defendant that these concessions that were granted in 1966 were simply a continuation or progression—not simply, but were in part—of the prior application and negotiations which had been entered into by Occidental prior to then, particularly 1963, and whether or not it is a matter of order of the proof, I don't know, but it is very definitely a part of what we propose to show that those earlier negotiations and applications had played no part in the granting

of these concessions. That is the connection which it has in the case.

So far as the order of the proof goes, I am not (794) particularly concerned.

Mr. Nizer: Well, if you contend it played no part, then why do you need the proposals?

My real objection is that this opens up a collateral issue which I think will confuse the present issue.

Judge, I don't think you can demonstrate it was claimed by us there was a progression. We did in reply to an answer as to whether Libya was novel to us by saying no, we had been there, but going into other deals in Libya can neither hurt nor help the determination of this issue. I think it will help us psychologically, but that is not what we want in this case.

Mr. VanVoorhis: I think in his opening statement Mr. Nizer said that these prior negotiations or applications, or whatever they may be called, in Libya did play a part in this, and, of course, if it is to be stipulated that whatever prior connection applications—however you describe it—of Occidental in Libya had no relevance or had nothing to do with these concessions which we maintain were turned up by Mr. Galic and his group, and which were granted in 1966, then perhaps it is another matter, but I am quite sure that Mr. Nizer is not prepared to stipulate anything of the kind.

The Court: Well, I had understood Mr. Nizer's (795) opening statement to say that apart from other defenses, one defense was that the concessions which had been received were not the result of any activity on the part of the Galic group that resulted in those concessions being turned up through their efforts.

Is that correct?

Mr. Nizer: That is correct, your Honor.

The Court: Doesn't that put the thing in arights. Where there is this reference to the prior ammonia plant, the fertilizer plant and the proposed concessions, isn't that relevant at all?

As you read some portions of the deposition this morning, I think earlier Mr. Nizer had made an objection on the same ground that it wasn't relevant to the issues here.

I think there is a good deal of material, I must say in all candor, that is going in here that has really nothing at all to do with this case.

Mr. Greenspoon: I agree with that, your Honor.

The Court: It may be good probing for purposes of discovery—and this is really why I suggested to you gentlemen it would be desirable for you to "streamline" the depositions, the term that I used for doing your homework, and just squeezing out what really are the essential matters. But we have gone so far I may as well take it.

(796) This is something that happens frequently. There is a free-wheeling examination under a pre-trial discovery proceeding which, of course, is entirely proper in terms of the lawyers preparing their cases, but a good deal doesn't belong in the case proper.

Mr. Nizer: In any event, if this were to be considered at all, it would be rebuttal if we raise that as a defense.

The Court: I think it is clear. I remember, and I think you stated just a moment ago I was correct, that your defense was that the concessions which relate to the subject matter of this lawsuit were not turned up by the Gallic group.

Isn't that your position?

Mr. Nizer: That's right.

Mr. VanVoorhis: But one of the arguments was that they had already been turned up partially at least by what Occidental did in Libya in 1963. There was a good deal of time that was devoted in Mr. Nizer's opening to just that.

Mr. Nizer: No such thing.

Mr. VanVoorhis: I said a moment ago that if the objection is to the order of proof, I don't mind. If he says it is rebuttal, why, we can bring it in then, but to say that it has no relation to the case is equivalent to (797) saying that Mr. Nizer has abandoned whatever he said in his opening about what may have been done in Libya by Occidental in 1963 as having some relevance.

The Court: Well, it is certainly clear that the ammonia plant and fertilizer plant had nothing to do with this case. Am I mistaken about that?

Certainly there isn't at issue in this case anything about an ammonia plant or a fertilizer plant.

Mr. VanVoorhis: Well, I would be inclined to agree with your Honor, except that they have been brought up as quite important by the defendant in regard to what they call "preferences".

The Court: We The "sweetener".

Mr. VanVoorhis: The "sweetener".

The Court: As you used the term.

Mr. VanVoorhis: In other words, they offered the same sweetener in 1963 but it did not take.

Mr. Nizer: I regret to say, —Judge—Judge VanVoorhis—you are misreading our purpose and intention and His Honor has stated it correctly. In 1966 it was on sealed bidding. In 1963 there was no sealed bidding at all. There was supposed to be a negotiation in an informal way. We sounded out our position. We knew about it. We recited the history in answer to direct questions as to whether he (798) had

ever been in Libya before. He said yes. You asked him what he was doing and he told you. But I make it clear, as His Honor put it to both of us, we do not claim that the sealed bids were accepted because of anything that was done in 1963.

Now, if that satisfies you, we are agreed on the whole matter. We do not claim that.

We say that the concessions we got were based upon the application which is in evidence, the preferences not yet in evidence but will be in a few moments—the preferences and the contents of that application, which is a huge volume and another volume. That was all that influenced the determination of the concessions and without Galic having anything to do with it, is our position.

So, therefore, going back to '63, except as a bit of history which you brought out and I would be glad to bring it out as history, it has no relevance to this issue.

The Court: I think Mr. Nizer's statement is a pretty direct statement on this.

Mr. VanVoorhis: It is a pretty direct statement, considerably more direct than anything he has made heretofore.

The Court: I didn't hear your answer to that, Mr. Nizer.

* * *

(799) Mr. VanVoorhis: Page 163, Line 21.

* * *

(800) "Q. Did you have any business that you were actively conducting at that time? A. Well, that was enough business, I think, to be reason enough for me to make continued trips to Libya.

* * *

"Q. Now, could you continue and tell us what else was said in the September 8, 1964 conversation? A. That is all I can recall."

(801) Passing now to Page 168 and reading something again offered by defendant without objection, Line 4:

"Q. Now, did you come to London alone or was Mr. Brenner or Mr. Vaughan or someone else from Occidental with you? A. Mr. Brenner came over from Paris.

"Q. Mr. Vaughan was not present? A. No.

"Q. Did you have a meeting or meetings with some or all of the persons who were there, to wit, Messrs. Ogbi, Herbert Allen, DeRovin and Galic? A. Yes.

"Q. You had one meeting or more than one meeting? A. More than one meeting.

"Q. All right. In the order in which the meetings occurred, will you tell us the date of the first meeting and who was present at it? A. I think the first meeting took place, to the best of my recollection, on September 7. It was in the cocktail lounge in the Claridge's Hotel, where I met Herbert Allen and he introduced me, as I recall it, to Mr. Galic and to General DeRovin, who was seated with him in the lobby, to the best of my recollection.

(802) "Q. All right. And I take it that the four of you then sat down at a table? A. Yes.

"Q. In the cocktail lounge? A. I think—we may have had a drink. It was—I think they were drinking. Maybe I joined them. I am not sure.

"Q. Was there any conversation on that occasion concerning the Libyan matter? A. I think he asked to speak to me alone.

"Q. Was there any conversation amongst the four of you dealing with business? A. No.

"Q. So Herbert asked to speak to you alone? A. Yes.

"Q. What happened—"

The Court: May I interrupt for a moment and off the record on this thing.

(Discussion off the record.)

"Q. What happened then? A. My best recollection is that he and I went upstairs to my suite and we sat there and talked for a while and—

"Q. What was the conversation?

(803) "A. That was the occasion which he mentioned Associated Oil and Gas.

"Q. What else did he mention? A. And he—after I rejected the idea of—

"Q. Tell us in what context he suggested Associated? Did he suggest it as a three-way deal between Allen & Company, Occidental and Associated? A. I am not sure whether it was to be three ways or not, or whether he suggested that Occidental have 50 per cent and that Allen & Associated divide up the other 50 per cent. I am not sure.

"Q. It was one or the other? A. Yes.

"Q. And you rejected Associated as a partner? A. Correct. I said to him that I felt that we had more knowhow and we were financially stronger than Associated, and that we didn't require Associated as a partner.

"Q. What did Herbert Allen say to that? A. Well, then he dropped that, and then he said that—that Allen & Company would like to participate.

"Q. On what basis? A. 25 per cent.

"Q. Yes? A. And I said that was satisfactory to me, providing (804) we—they would first of all—that Galic and his friends would be responsible for us getting concessions, and secondly that Allen & Company would make investment in proportion to their percentage.

"And he said that his would have to be a mutually satisfactory basis."

Mr. VanVoorhis: Now here is something that we object to again as simply not responsive and as a self-serving declaration.

Mr. Nizer: Would you read it, please?

Mr. VanVoorhis: —expressing the opinion of the —

The Court: Well, in this instance, as I read it because of the balance of the statement it would appear to me that he is relating an alleged conversation, but he states "And I said that that was quite agreeable to me." It would seem to me that this is in response to something that Allen said to him, although I think that there may be some substance to your position that he is expressing an opinion, but it seems to me in reading the full context that he has related that as part of the conversation. We will take it on that basis.

"In other words, they wanted the freedom of action of deciding if they wanted to put up their money or (805) didn't want to put up their money at any stage. And I said that that was quite agreeable to me. And with that, we parted, and I don't believe I saw Herbert any more while I was in London.

"Q. Was that the totality of the conversation that you had with Herbert Allen? A. That was the sum and substance of it.

Offered by plaintiff.

"Q. Didn't Herbert Allen ask you for 50 per cent for Allen & Company in the first instance? A. No.

"Q. Now, you said to him, I believe you testified that it was satisfactory to you, among other reasons, proving Galic and his friends were responsible for you getting the concessions; is that right? A. Yes.

"Q. Now, did you explain to Mr. Allen what you meant by the words 'responsible for getting the concessions?' A. Well, they had to be—we had—they had to render services that would enable us to do something that would—so that we would get the concessions, and I have told you before, some of the areas of services that I expected them to render.

"Q. Yes, but I am trying to find out what you told (806) Mr. Allen on that occasion you meant, if anything. A. Well, I told him what I had told you before. I can repeat it if you like.

"Q. All right, tell us everything you told Mr. Allen on that occasion, other than as previously testified to. A. Well, I can't tell you anything more than was previously testified to. I have already testified to everything.

"Q. In other words, you have now testified to the entire substance of the conversation you had with Mr. Herbert Allen on September 17, 1964, is that right? A. That's correct.

"Q. Well now, didn't you tell him on that occasion that, of course, if there was a venture, Occidental would manage it? A. No, that wasn't—that didn't—that wasn't discussed.

"Q. Did Mr. Allen ask you any questions at all about what your plans were, if any, for obtaining concessions in Libya? A. Well, plans were supposed to be furnished by Galic and by DeRovin by Ogbi. Their services were supposed to be that.

(807) "Q. Did Mr. Herbert Allen ask you what your plans were? A. No.

"Q. Did you tell him what your plans were? A. No. The matter was premature at that stage.

"Q. Did you suggest to Mr. Herbert Allen that he should absent himself from any discussions that you would have with Messrs. Galic, Ogbi or DeRovin? A. No."

Armand Hammer, E.B.T.

(Continuing reading by plaintiff.)

"Q. Did Mr. Herbert Allen attend any of the meetings that you had with Ogbi, Galic or DeRovin? A. Not to my recollection.

"Q. In other words, the only meeting at which Mr. Herbert Allen was present, was the one which commenced in the cocktail lounge and ended in your suite? A. To the best of my recollection.

"Q. Do you know when Mr. Herbert Allen left Claridge's?"

There is no answer.

"Q. When did you leave Claridge's? A. I think I left on the 19th.

"Q. So that you were there on September 17, September 18 and September 19? A. To the best of my recollection.

(808) "Q. Part or all of those days? A. Yes, I believe that's correct."

• • •

"Q. Now, at the point in time when you saw Mr. Herbert Allen, had Mr. Brenner arrived at the hotel? A. Yes.

"Q. Had Mr. Ogbi? A. I'm not sure. I know I saw Mr. Ogbi on the 18th. I don't remember seeing him on the 17th.

"Q. In other words, you had seen, by the time you saw Mr. Allen, Mr. Brenner, Mr. DeRovin and Mr. Galic? A. I'm not sure whether I saw Brenner after I saw—met them in the cocktail lounge or before. I'm not sure but I—I know I met Mr. Brenner on the 18th and I know that I met Mr. Ogbi on the 18th.

"Q. What about Mr. Assous? A. I don't remember him at all. I have no recollection of this gentleman.

"Q. All right, now, after you had your conversation with Mr. Herbert Allen, what was the next conversation that (809) you had? A. The next conversation was with Mr. Galic, and General DeRovin.

"Q. All right, now, didn't you tell Mr. Allen that you didn't want him around because you were going to talk money? A. No."

And the defendant, at the defendant's request:

"Q. With Messrs. DeRovin and Galic? A. Certainly not."

Now continuing, reading for the plaintiff.

"Q. All right, now, what day did you meet with Messrs. DeRovin and Galic? A. I believe it was the 18th.

"Q. And I take it that Mr. Ogbi was not present? A. I met him on the 18th, too, but I believe I met him separately.

"Q. But he was not present at this conversation that you had with Messrs. DeRovin and Galic? A. No, sir.

"Q. And was Mr. Brenner present? A. Yes.

"Q. All right, so we have a meeting between you and Mr. Brenner and Mr. DeRovin and Mr. Galic, and that took place at Claridge's. (810) A. Yes.

"Q. Is that correct? A. Yes.

"Q. Was it in your suite? A. Yes.

"Q. What was that conversation? A. Well, Mr. Galic said that he wanted to be—he wanted an agreement. He wanted to be compensated if he rendered such services as we had discussed and he said that General DeRovin had to be compensated.

"And I said that an agreement would also have to be made with Mr. Ogbi. So we proceeded to negotiate.

"Mr. Galic wanted 4 per cent override, 4 per cent net carried interest—I don't remember what it was characterized at—and General DeRovin wanted 3 per cent.

"I said that we could not burden the concession with such a payment but we would give him $200,000 and then his net carried interest reached $500,000, he would cease to get any more interest in the concession.

"And Mr. Brenner then drafted these two agreements that you have here which included the—these conditions that I have just mentioned.

"Q. Now, were these drafted at the hotel by Mr. Brenner? (811) A. Yes.

"Q. You brought with you some International Ore and Fertilizer Corporation stationery? A. I had some, yes.

"Q. But you didn't have any stationery of Occidental Petroleum? A. No.

"Q. Now, on what day was Plaintiff's Exhibit 4 actually signed?"

Mr. Greenspoon: Your Honor, that is now Plaintiff's Exhibit 36.

The Court: The agreement with Galic?

Mr. Greenspoon: Yes, your Honor, of September 18, 1964.

The Court: Off the record.

(Discussion off the record.)

"Q. Well, can you explain to me why the very opening sentence says, 'Further to our conversations held in London from 17 to 19 September, I herewith confirm'? A. I think that is an error.

"Q. What is an error, the date of the letter? A. I think the 19th is an error.

"Q. So that should be from the 17th to the 18th? A. Yes.

(812) "Q. So that would be from the 17th to the 18th? A. Yes.

"Q. Now, you go on to say here, 'I herewith confirm the agreement between us as follows in consideration of services to be rendered.' Do you see that? A. Yes.

"Q. Now, what services did you and Mr. Galic discuss that he was to render? A. Well—Well, Mr. Galic services were to be such that would help us in obtaining concessions. He was to help us in framing our application, he and General DeRovin—they were both together during

this conversation—and the services covered both. They were acting together at this time.

"Q. Was this what was said? A. Yes.

"Q. At the time? A. Yes, they were both participating.

"Q. I am trying to find out what was said. A. What was said?

"Q. Yes. A. I am giving you what was said.

"Q. By whom? Who said these things? A. I said them, Brenner translated. You must remember (813) that the General spoke poor English, Galic speaks poor English, so that I—I carried on a conversation with both of them and if there were any words that I didn't understand or they didn't understand, why, Brenner acted as interpreter.

"Q. In other words, you were speaking English, Galic and DeRovin were speaking French and Brenner acted as the interpreter? A. No, they were—everybody was speaking English. But whenever it came to some phrase or some language that neither DeRovin nor Galic clearly understood, why, Brenner would help out.

"Q. All right, will you continue now with the conversation, telling us who said what, as between you, Brenner, DeRovin and Galic? A. Well, Mr. Galic said that he and DeRovin could be of great help in our getting the concession, that they—Mr. DeRovin was—had spent many years in Libya, and he knew—he knew the—all the conditions that would have to be met in order to satisfy the government, in order to have the government grant a concession, of one company in competition with other companies, that they also would rely heavily on Ogbi, who also was a —had spent all his life in Tripoli, and who was able to be of assistance to helping (814) us to frame our application and to offer the government inducements which would make the government favor us as against some other concessionaire, and they would be able to get us some help geologically, to help our own geologists, in selecting areas, and getting permits for our geologists, in selecting areas,

and getting permits for our geologists to make studies and investigations. And in general be of help to do something that we couldn't do ourselves.

"Q. Now, in this conversation was there any mention made of specific areas of Libya to which Galic thought Occidental should address its attention? A. No—well, we had some information already about areas there. We indicated to them the areas we based on our studies, up to that time, which we considered were attractive.

"Q. And you mentioned what areas they were, is that right? A. Yes.

"Q. Now, did the areas that you mentioned at that time, at that meeting, embrace bidding blocks 42B and 44? A. They embraced 59, which was later broken up, and I think 42B was part of 59. But 44 was just—a very small part of 44 was in 59, and 32 was not one of the concessions we applied for.

(815) "Q. I don't follow the last part of that answer. You mean to say that— A. I say 44 was not—only a small part of 44 was included in 59, before it was broken up. And 32 was never applied for by us.

"Q. Well, I am asking you about the areas which you described to Mr. Galic that you were planning to apply for. A. Yes, I thought it was 32 and 59.

"Q. That is what you told Mr. Galic about? A. Yes.

"Q. And General DeRovin? A. Yes, that was what we were interested in. With the information that we had up to that time.

"Q. Didn't Mr. Galic tell you that he had information from the Oil Ministry, that the area now embraced in 42B was the best area to look for? A. No.

"Q. Did he suggest any areas at all to you in that meeting? A. No.

"Q. Did General DeRovin? A. No.

"Q. All right. What else was said at the meeting between you, DeRovin, Brenner and Galic? (816) A. Well, these terms of this proposed agreement were discussed, and in some detail.